FORM 10-Q

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Quarterly Period Ended June 30, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to .

Commission file number: 001-37515

Aqua Metals, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**47-1169572**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification no.)

1010 Atlantic Avenue
Alameda, California 94501
(Address of principal executive offices, including zip code)

(510) 479-7635
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Act):

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☒

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

As of August 8, 2016, there were 15,574,225 outstanding shares of the common stock of Aqua Metals, Inc.

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

AQUA METALS, INC.
Condensed Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	June 30, 2016 (unaudited)	December 31, 2015 (Note 2)
ASSETS		
Current assets		
Cash and cash equivalents	$ 22,550	$ 20,141
Restricted cash	3,467	11,667
Prepaid expenses and other current assets	91	147
Total current assets	26,108	31,955
Non-current assets		
Property and equipment, net	28,100	12,603
Intellectual property, net	1,097	1,065
Other assets	1,823	1,653
Total non-current assets	31,020	15,321
Total assets	$ 57,128	$ 47,276
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 2,108	$ 3,192
Accrued expenses	871	81
Deferred rent, current portion	171	-
Notes payable, current portion	159	45
Total current liabilities	3,309	3,318
Deferred rent, non-current portion	1,054	1,071
Notes payable, non-current portion	9,216	9,222
Convertible notes payable, non-current portion	89	-
Total liabilities	13,668	13,611
Commitments and contingencies	-	-
Stockholders' equity		
Common stock; $0.001 par; 50,000,000 shares authorized; 15,574,225 and 14,137,442 shares issued and outstanding June 30, 2016 and December 31, 2015, respectively	15	14
Additional paid-in capital	63,255	48,356
Accumulated deficit	(19,810)	(14,705)
Total stockholders' equity	43,460	33,665
Total liabilities and stockholders' equity	$ 57,128	$ 47,276

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statements of Operations
(in thousands, except share and per share amounts)
(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2016	2015	2016	2015
Operating expenses				
Operations and development costs	$ 1,309	$ 422	$ 2,192	$ 635
Business development and management costs	1,516	640	2,811	1,112
Total operating expenses	2,825	1,062	5,003	1,747
Loss from operations	(2,825)	(1,062)	(5,003)	(1,747)
Other expense (income)				
Increase in fair value of derivative liabilities	-	1,603	-	5,499
Interest expense	112	318	115	634
Interest income	(6)	(1)	(14)	(2)
Total other expense, net	106	1,920	101	6,131
Loss before income tax expense	(2,931)	(2,982)	(5,104)	(7,878)
Income tax expense	-	-	1	2
Net loss	$ (2,931)	$ (2,982)	$ (5,105)	$ (7,880)
Weighted average shares outstanding, basic and diluted	14,735,077	4,363,641	14,436,260	4,363,641
Basic and diluted net loss per share	$ (0.20)	$ (0.68)	$ (0.35)	$ (1.81)

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statement of Stockholders' Equity
(in thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Deficit	Equity
Balances, December 31, 2015	14,137,442	$ 14	$ 48,356	$ (14,705)	$ 33,665
Stock based compensation - stock options	-	-	738	-	738
Warrants issued for consulting services	-	-	73	-	73
Cashless exercise of warrant	15,203	-	-	-	-
Common stock issued in May 2016 Private Placement, net of $345 offering costs	719,333	1	4,777	-	4,778
Common stock issued for cash from Interstate Battery, net of $663 allocated transaction cost	702,247	-	4,336	-	4,336
Proceeds allocated to warrants issued and beneficial conversion feature in connection with Interstate Batteries Agreement	-	-	4,975	-	4,975
Net loss	-	-	-	(5,105)	(5,105)
Balances, June 30, 2016	15,574,225	$ 15	$ 63,255	$ (19,810)	$ 43,460

The accompanying notes are an integral part of these condensed consolidated financial statements.

AQUA METALS, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands)

	Six months ended June 30, 2016	2015
Cash flows from operating activities:		
Net loss	(5,105)	$ (7,880)
Reconciliation of net loss to net cash used in operating activities		
Depreciation	198	23
Amortization of intellectual property	59	54
Fair value of warrants issued for consulting services	73	-
Stock option compensation	738	81
Increase in fair value of derivative liabilities	-	5,499
Amortization of debt discount	8	455
Amortization of deferred financing costs	22	-
Non-cash convertible note interest expense	56	-
Changes in operating assets and liabilities		
Inventory	-	(138)
Prepaid expenses and other current assets	18	(154)
Accounts payable	(257)	136
Accrued expenses	789	229
Deferred rent	114	-
Net cash used in operating activities	(3,287)	(1,695)
Cash flows from investing activities:		
Decrease in restricted cash	5,556	-
Purchases of property and equipment	(13,724)	(1,205)
Intellectual property related expenditures	(91)	(6)
Net cash used in investing activities	(8,259)	(1,211)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net of offering costs	9,114	-
Payments on capital leases	(9)	-
Proceeds from issuance of convertible notes payable, net of deferred issuance costs	4,850	-
Net cash provided by financing activities	13,955	-
Net increase (decrease) in cash and cash equivalents	2,409	(2,906)
Cash and cash equivalents at beginning of period	20,141	4,537
Cash and cash equivalents at end of period	$ 22,550	$ 1,631
Non-cash investing activities		
Tenant improvement allowances	$ 78	$ -
Non-cash financing activities		
Capital lease	$ 101	$ -
Supplemental disclosure of non-cash transactions		
Increase in property and equipment resulting from increase in accounts payable	$ 1,817	$ -
Decrease in restricted cash resulting from a decrease in accounts payable	$ 2,644	$ -
Recognition of convertible debt discount	$ 4,975	$ -

The accompanying notes are an integral part of these condensed consolidated financial statements.

1. Organization

Aqua Metals, Inc. (the "Company") was incorporated in Delaware on June 20, 2014 and commenced operations on June 20, 2014 (inception). On January 27, 2015, the Company formed two wholly-owned subsidiaries, Aqua Metals Reno, Inc. ("AMR"), and Aqua Metals Operations, Inc. (collectively, the "Subsidiaries"), both incorporated in Delaware. The Company has developed an innovative process for recycling lead acid batteries. The Company intends to manufacture the equipment it has developed, and will also operate lead acid battery recycling facilities. Construction of the first recycling facility is nearing completion in McCarran, Nevada.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by such accounting principles for complete financial statements. In the opinion of management, all adjustments (which include normal recurring adjustments) considered necessary to present fairly each of the balance sheet as of June 30, 2016, the statements of operations for the three and six months ended June 30, 2016 and June 30, 2015, the statement of stockholders' equity for the six months ended June 30, 2016 and the statements of cash flows for the six months ended June 30, 2016 and June 30, 2015, as applicable have been made. The condensed consolidated balance sheet as of December 31, 2015 has been derived from our audited financial statements as of such date, but does not include all disclosures required by U.S. GAAP. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements for the period ended December 31, 2015, which are included on Form 10-K filed with the Securities and Exchange Commission on March 28, 2016. Certain reclassifications have been made to the December 31, 2015 balance sheet to conform to current period presentation. Specifically, equipment deposits at December 31, 2015 of $3.8 million have been reclassified to property and equipment with the remaining balance reclassified to other assets.

The results of operations for the three months and six months ended June 30, 2016 are not necessarily indicative of results that may be expected for the year ended December 31, 2016.

Principles of consolidation

The condensed consolidated financial statements include the accounts of the Company and its Subsidiaries, both of which are wholly-owned subsidiaries. Significant inter-company accounts and transactions have been eliminated in consolidation.

Use of estimates

The preparation of the condensed consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of expenses during the period. Significant items subject to such estimates and assumptions include the carrying amount and valuation of long-lived assets, the valuation of conversion features of convertible debt, valuation allowances for deferred tax assets, the determination of stock option expense and the determination of the fair value of stock warrants issued. Actual results could differ from those estimates.

Cash and cash equivalents

The Company considers all highly liquid instruments with original or remaining maturities of 90 days or less at the date of purchase to be cash equivalents. The Company maintains its cash balances in large financial institutions. Periodically, such balances may be in excess of federally insured limits.

Restricted cash

Restricted cash is comprised of funds held in escrow at Green Bank for the purpose of paying for the construction of the lead recycling plant building in McCarren, NV. The building is expected to be completed during the third quarter of 2016. As of June 30, 2016, $1.3 million of the outstanding accounts payable balance is to be paid out of the escrowed funds.

Property and equipment

Property and equipment are stated at cost net of accumulated depreciation. Depreciation on property and equipment is calculated on the straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the shorter of the life of the asset or the remaining term of the lease.

Intangible and other long-lived assets

The intangible asset consists of a patent application contributed to the Company by five founding stockholders, patent applications for technology developed by the Company and trademark applications. The useful life of the intangible assets has been determined to be ten years and the assets are being amortized. The Company periodically evaluates its intangible and other long-lived assets for indications that the carrying amount of an asset may not be recoverable. In reviewing for impairment, the Company compares the carrying value of such assets to the estimated undiscounted future cash flows expected from the use of the assets and their eventual disposition. When the estimated undiscounted future cash flows are less than their carrying amount, an impairment loss is recognized equal to the difference between the assets' fair value and their carrying value. In addition to the recoverability assessment, the Company routinely reviews the remaining estimated lives of its long-lived assets. Any reduction in the useful life assumption will result in increased depreciation and amortization expense in the period when such determination is made, as well as in subsequent periods. The Company evaluates the need to record impairment during each reporting period. No impairment has been recorded. The Company determined that the estimated life of the intellectual property properly reflected the current remaining economic life of the asset.

Research and development

Research and development expenditures are expensed as incurred and consist of product development, regulatory support for technology, laboratory materials and supply costs and other technical support costs, including salaries and consultant fees.

Income taxes

The Company accounts for income taxes in accordance with the liability method of accounting for income taxes. Under the liability method, deferred assets and liabilities are recognized based upon anticipated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. The provision for income taxes is comprised of the current tax liability and the changes in deferred tax assets and liabilities. The Company establishes a valuation allowance to the extent that it is more likely than not that deferred tax assets will not be recoverable against future taxable income.

The Company recognizes the effect of uncertain income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

Stock-based compensation

The Company recognizes compensation expense for stock-based compensation in accordance with ASC 718 "Compensation – Stock Compensation." For employee stock-based awards, the Company calculates the fair value of the award on the date of grant using the Black-Scholes-Merton method for stock options; the expense is recognized over the service period for awards to vest.

The estimation of stock-based awards that will ultimately vest requires judgement and to the extent actual results or updated estimates differ from the original estimates, such amounts are recorded as a cumulative adjustment in the period estimates are revised. The Company considers many factors when estimating expected forfeitures, including types of awards, employee class and historical experience.

Net loss per share

Basic net loss per share is computed by dividing net loss by the weighted average number of vested shares outstanding during the period. Diluted net loss per share is computed by giving effect to all potential dilutive common securities, including convertible notes, options and warrants. Potential dilutive common shares include the dilutive effect of the common stock underlying in-the-money stock options as is calculated based on the average share price for each period using the treasury stock method. Under the treasury stock method, the exercise price of an option and the average amount of compensation cost, if any, for future services that the Company has not yet recognized when the option is exercised, are assumed to be used to repurchase shares in the current period.

For all periods presented in this report, convertible notes, stock options, and warrants were not included in the computation of diluted net loss per share because such inclusion would have had an antidilutive effect.

	Six months ended June 30,	
Excluded potentially dilutive securities (1):	2016	2015
Convertible Notes - principal	702,247	2,400,000
Convertible Notes - interest	-	97,644
Consulting warrants to purchase common stock	461,364	436,364
Options to purchase common stock	853,685	609,999
Financing, IPO and O-A warrants to purchase common stock	3,295,258	220,268
Total potential dilutive securities	5,312,554	3,764,275

(1) The number of shares is based on the maximum number of shares issuable on exercise or conversion of the related securities as of the period end. Such amounts have not been adjusted for the treasury stock method or weighted average outstanding calculations as required if the securities were dilutive.

Segment and Geographic Information

Operating segments are defined as components of an enterprise engaging in business activities for which discrete financial information is available and regularly reviewed by the chief operating decision maker in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment, and the Company operates in only one geographic segment.

Recent accounting pronouncements

In January 2016, the FASB issued ASU No. 2016-01, Financial Instruments - Overall: Recognition and Measurement of Financial Assets and Financial Liabilities. The updated guidance enhances the reporting model for financial instruments, which includes amendments to address aspects of recognition, measurement, presentation and disclosure. The amendment to the standard is effective for the Company beginning on June 1, 2018. While the Company is currently assessing the impact of the new standard, it does not expect this new guidance to have a material impact on its consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02 - Leases (ASC 842), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e. lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases today. ASC 842 supersedes the previous leases standard, ASC 840 Leases. The standard is effective on January 1, 2019, with early adoption permitted. The Company is in the process of evaluating the impact of this new guidance.

In March 2016, the FASB issued ASU 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting. The ASU includes multiple provisions intended to simplify various aspects of the accounting for share-based payments. While aimed at reducing the cost and complexity of the accounting for share-based payments, the amendments are expected to significantly impact net income, EPS, and the statement of cash flows. For public companies, the amendments in this ASU are effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted. The Company is in the process of evaluating the impact of this ASU on its financial statements.

There were no other recent accounting pronouncements or changes in accounting pronouncements during the six months ended June 30, 2016 that are of significance or potential significance to the Company.

3. Property and equipment, net

Property and equipment, net, consisted of the following for the dates indicated (in thousands):

Asset Class	Useful Life (Years)	June 30, 2016	December 31, 2015
Operational equipment	3-10	$ 9,989	$ 356
Lab equipment	5	187	52
Computer equipment	3	107	72
Office furniture and equipment	5	132	9
Leasehold improvements	5-7	1,408	1,086
Land	-	1,047	1,047
Building under construction	25	13,835	5,681
Equipment under construction	10	1,683	4,390
		28,388	12,693
Less: accumulated depreciation		(288)	(90)
		$ 28,100	$ 12,603

Depreciation expense was $120,000 and $198,000 for the three and six months ended June 30, 2016, respectively and $18,000 and $23,000 for the three and six months ended June 30, 2015, respectively. Building under construction is the 136,750 square foot lead acid battery recycling plant being built in McCarran, Nevada. Equipment under construction is AquaRefining modules manufactured by the Company to be used in the McCarran, Nevada recycling plant.

Certain costs necessary to make the recycling facility ready for its intended use have been capitalized, including interest expense on notes payable. Capitalized interest totaled $152,000 and $303,000 for the three and six months ended June 30, 2016, respectively. There was no capitalized interest during the same periods during 2015.

4. Intellectual Property

On July 3, 2014, five of the founding stockholders contributed the rights to certain intellectual property to the Company in exchange for the issuance of 4,101,822 shares with a fair value of $1,059,000. This contribution was recorded as an intangible asset with an offset to additional paid-in capital for $637,000 and deferred taxes for $422,000.

Intellectual property, net, is comprised of the following as of the dates indicated (in thousands):

	June 30, 2016	December 31, 2015
Intellectual property	$ 1,310	$ 1,219
Accumulated amortization	(213)	(154)
Intellectual property, net	$ 1,097	$ 1,065

Amortization expense was $28,000 and $27,000 for the three months ended June 30, 2016 and 2015, respectively and $59,000 and $54,000 for the six months ended June 30, 2016 and 2015.

5. Other Assets

The Company's other asset balance is made up of a security deposit for the Alameda headquarters lease, totaling $594,000, a certificate of deposit totaling $1,000,000, held by Green Bank as collateral for the AMR construction note payable balance, $146,000 deferred financing costs related to the Interstate Battery financing more fully described in Note 9 and $83,000 of various prepaid deposits on equipment and other assets.

The lease deposit related to the Alameda headquarters will be released in three installments: June 17, 2017, $275,000 will be released; followed by $275,000 in June 2018; and the remainder will be released at the end of the lease term. The deposit with Green Bank will be released after AMR has three consecutive months of positive cash flow from operations. Deferred financing costs will be amortized over the three-year life of the Interstate Battery convertible note more fully described in Note 9. The various prepaid deposits on equipment will be reclassified to equipment once the equipment has been delivered and installed.

6. Convertible Notes

As described more completely under the caption "Interstate Battery Agreements" below in Note 9, the Company issued to Interstate Battery System International, Inc. and its wholly-owned subsidiary (collectively "Interstate Battery") an 11% convertible note with a face amount of $5.0 million due May 24, 2019. The Company allocated the proceeds from the Interstate Battery agreements to the convertible note, common stock and warrants comprising the financing agreements based on the relative fair value of the individual securities on the May 24, 2016 closing date of the agreements. Additionally, the convertible notes contained an embedded conversion feature having intrinsic value at the issuance date, which value the Company treated as an additional discount attributed to the convertible note, subject to limitations on the absolute amount of discount attributable to the convertible notes and its allocated value. The Company recorded a corresponding credit to additional paid-in capital, an equity account, attributable to the beneficial conversion feature. The discounts attributable to the convertible note, an aggregate of $4,975,000, are amortized using the effective interest method over the three-year term of the note, maturing on May 24, 2019. Because the discount on the convertible note exceeds 99% of its initial face value, and because the discount is amortized over the period from issuance to maturity, the calculated effective interest rate is 184.75%.

Amortization of the note discount for the three and six month periods ended June 30, 2016 totaled $8,000.

The June 30, 2016 convertible note payable is comprised of the following (in thousands):

Convertible note payable	$	5,000
Accrued interest		56
Note discount		(4,967)
Convertible note payable, net	$	89

On October 31, 2014, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with accredited investors (the "Investors"), pursuant to which the Company issued an aggregate of $6,000,000 principal amount of senior secured convertible notes (the "Convertible Notes"). In connection with the sale of the Convertible Notes (the "Bridge Financing"), the Company entered into a registration rights agreement (the "Registration Rights Agreement") and a security agreement (the "Security Agreement") with the Investors. The closing of the Bridge Financing was completed October 31, 2014. Upon issuance, the Convertible Notes bore simple interest at 6% per annum and upon the occurrence of any specified event of default, the Convertible Notes would bear interest at 12% per annum and were scheduled to mature on December 31, 2015.

The principal, $6,000,000 and interest, $279,678, of the Convertible Notes were converted into 2,511,871 shares of the Company's common stock at a conversion price of $2.50 per share on August 5, 2015 as part of the Company's Initial Public Offering ("IPO").

7. Deferred Rent

On August 7, 2015, the Company signed a lease for 21,697 square feet of mixed office and manufacturing space in Alameda, CA. The term of the lease is 76 months plus 6 months pre commencement date for tenant improvement construction. The total cost of the lease is $3,071,000 which is being amortized over 82 months. As of June 30, 2016 and December 31, 2015, the landlord had incurred $947,000 and $869,000, respectively, in tenant improvements. The tenant improvements cost has been included in owned assets and deferred rent and is being amortized over the life of the lease. Net deferred rent expense for the three months and six months ending June 30, 2016 was $36,000 and $114,000, respectively. The June 30, 2016 short term deferred rent balance of $171,000 is included in current liabilities whereas the December 31, 2015 balance of negative $38,000 was included in prepaid expenses and other current assets. The remaining liability of $1,054,000 and $1,071,000 at June 30, 2016 and December 31, 2015, respectively, is classified as long term deferred rent.

8 Notes Payable

AMR entered into a $10,000,000 loan with Green Bank on November 3, 2015. The term of the loan is twenty-one years. During the first twelve months, only interest is payable and thereafter monthly payments of interest and principal are due. The interest rate will adjust on the first day of each calendar quarter equal to or greater of six percent (6%) or two percent (2%) per annum above the minimum prime lending rate charged by large U.S. money center commercial banks as published in the Wall Street Journal. The terms of the Loan Agreement contain various affirmative and negative covenants. Among them, AMR must maintain a minimum debt service coverage ratio of 1.25 to 1.0 (beginning with the twelve-month period ending March 31, 2017), a maximum debt-to-net worth ratio of 1.0 to 1.0 and a minimum current ratio of 1.5 to 1.0. AMR was in compliance with all covenants as of and for the three months and six months ended June 30, 2016.

The net proceeds of the loan were deposited into an escrow account at Green Bank. The funds will be released as payment for the building being constructed in McCarran, NV to house AMR's lead acid recycling operation. Collateral for this loan is AMR's accounts receivable, goods, equipment, fixtures, inventory, accessions and a certificate of deposit in the amount of $1,000,000.

The loan is guaranteed by the United States Department of Agriculture Rural Development ("USDA"), in the amount of 90% of the principal amount of the loan. The Company paid a guarantee fee to the USDA in the amount of $270,000 at the time of closing and will be required to pay to the USDA an annual fee in the amount of 0.50% of the guaranteed portion of the outstanding principal balance of the loan as of December 31 of each year.

Notes payable is comprised of the following as of the dates indicated (in thousands):

	June 30, 2016	December 31, 2015
Notes payable, current portion		
Thermo Fisher Financial Service	$ 42	$ 16
Green Bank, net of issuance costs	117	29
	$ 159	$ 45
Notes payable, non-current portion		
Thermo Fisher Financial Service	$ 66	$ 1
Green Bank, net of issuance costs	9,150	9,221
	$ 9,216	$ 9,222

The Thermo Fisher Financial Service obligations relate to capital leases. The costs associated with obtaining the Green Bank loan were recorded as a reduction to the carrying amount of the note and are being amortized as interest expense within the condensed consolidated statements of operations over the twenty-one year life of the loan.

9. Stockholders' Equity

Interstate Battery Agreements

Investment Agreement

The Company entered into a Credit Agreement dated May 18, 2016 with Interstate Battery pursuant to which Interstate Battery loaned the Company $5,000,000 in consideration of the Company's issuance of a secured convertible promissory note in the original principal amount of $5,000,000. The note bears interest at the rate of eleven percent (11%) per annum, compounding monthly, and all interest is payable upon the earlier of maturity or conversion of the principal amount. The loan matures on May 24, 2019. The outstanding principal is convertible into shares of the Company's common stock at a conversion price of $7.12 per share. The Company obligations under the note and Credit Agreement are secured by a second priority lien on the real estate, fixtures and equipment at the Company's recycling facility at McCarran, Nevada. The Credit Agreement includes representations, warranties, and affirmative and negative covenants that are customary of institutional credit agreements.

Pursuant to the Credit Agreement, the Company also issued to Interstate Battery two common stock purchase warrants, including:

- a warrant to purchase 702,247 shares of the Company's common stock, at an exercise price of $7.12 per share, that is exercisable upon grant and expires on May 24, 2018; and

- a warrant to purchase 1,605,131 shares of the Company's common stock, at an exercise price of $9.00 per share, that is exercisable commencing November 24, 2016 and expires on May 24, 2019.

The warrants contain cashless exercise and standard anti-dilution adjustment provisions. If Interstate converts its convertible note and exercises both warrants in their entirety, it will own slightly less than 20% of the Company's common stock at an average price per share of approximately $7.93.

The Company also entered into a Stock Purchase Agreement dated May 18, 2016 with Interstate Battery pursuant to which the Company issued and sold to Interstate Battery 702,247 shares of the Company's common stock at $7.12 per share for the gross proceeds of approximately $5,000,000. The Stock Purchase Agreement includes customary representations, warranties, and covenants by Interstate Battery and us, and an indemnity from us in favor of Interstate Battery.

In connection with the investment transactions, the Company also entered into an Investors Rights Agreement dated May 18, 2016 with Interstate Battery pursuant to which the Company granted Interstate Battery customary demand and piggyback registration rights, limited board observation rights over the next three years and limited preemptive rights allowing Interstate Battery the right to purchase its proportional share of certain future equity issuances by the Company over the next three years. The Company included all of the Interstate Battery shares in its S-3 Registration Statement filed with the Securities and Exchange Commission on August 1, 2016.

The investment transactions with Interstate Battery closed on May 24, 2016. There were no sales commissions paid by the Company in connection with its sale of securities to Interstate Battery.

The Company allocated the $10.0 million proceeds from the Credit Agreement and Stock Purchase Agreement, to the various securities based on their relative fair values on the closing date of May 24, 2016.

- The fair value of the note was calculated using an average of the Merrill Lynch US High Yield CCC rate of 16.21% on May 24, 2016 and the Merrill Lynch US High Yield B effective yield of 7.44% on May 24, 2016.
- The fair value of the common stock was based on the closing market price of the Company's common stock on NASDAQ on May 24, 2016.

The fair value of the warrants using the Black-Scholes-Merton Option Pricing Model and the assumptions are listed in the table below.

	Warrant #1	Warrant #2
Warrant shares issued	702,247	1,605,131
Market price	$ 11.39	$ 11.39
Exercise price	$ 7.12	$ 9.00
Term (years)	2	3
Risk-free interest rate	0.91%	1.05%
Volatility	65.70%	67.80%
Dividend rate	0%	0%
Per share FV of warrant	$ 5.89	$ 5.89
FV of warrant	$ 4,136,074	$ 9,449,754

Both warrants were issued on May 24, 2016, when the closing market price of our stock was $11.39.

The table below presents the allocation of the proceeds based on the relative fair values of the stock, warrants and note.

	Fair value	Allocated value
Allocation of Proceeds		
Convertible note	$ 4,878,974	$ 1,843,669
Warrants	13,585,828	5,133,819
Common stock	7,998,593	3,022,512
	$ 26,463,396	$ 10,000,000

The difference between the face value of the convertible note and the allocated amount (which considers both the allocated fair value of the issued stock and allocated fair value of the warrants) was recorded as an initial discount to the convertible note; common stock was recorded at its allocated fair value as a credit to par value and additional paid-in capital as appropriate, based on the number of shares issued, and the allocated fair value of the warrant was credited to additional paid-in capital. After taking into consideration the amortization of the note discount, the effective interest rate is 184.75%.

The convertible note includes an embedded beneficial conversion feature. The intrinsic value of the beneficial conversion feature was treated as an additional component of the discount attributable to the convertible note. The initial discount (attributable to the stock and warrants as noted above) and the discount attributable to the beneficial conversion feature exceeds the face amount of the convertible note. To avoid reducing the initial net carrying value of the convertible note to or below zero, the discount attributable to the beneficial conversion feature was limited such that the aggregate of all discounts does not exceed 99.5% of the face amount of the convertible note. The discount will be accreted to interest expense over the life of the loan. If the loan is converted prior to its maturity, any remaining discount will be expensed immediately.

Costs incurred in connection with the deal of $813,000 were allocated between additional paid-in capital and prepaid financing/ debt discount (“debt issuance costs”) in the same manner as the above allocation of proceeds. The allocated debt issuance costs of $150,000 were recorded in Other assets and are amortized to interest expense over the three-year life of the loan. Once the discounted debt balance is greater than the remaining asset balance, the asset balance will be reclassified as an offset to the debt in accordance with ASC 2015-03. The remaining $663,000 was recorded as a reduction to additional paid-in capital.

National Securities Placement

On May 18, 2016, the Company entered into a Stock Purchase Agreement and a Registration Rights Agreement with certain accredited investors pursuant to which the Company issued and sold to the investors 719,333 shares of its common stock at a price of $7.12 per share for the gross proceeds of $5,121,651. The Stock Purchase Agreement includes customary representations, warranties, and covenants by the investors and the Company, and an indemnity from the Company in favor of the investors. The private placement closed on May 24, 2016. The Company included all of these shares in its S-3 Registration Statement filed with the Securities and Exchange Commission on August 1, 2016.

National Securities Corporation acted as placement agent for the private placement and received sales commission in the amount of six percent (6%) of the gross proceeds, or a total of $307,000 in commissions from us. In addition, we reimbursed National Securities for its out-of-pocket expenses and legal fees in the aggregate amount of $38,000. The total costs of $345,000 have been recorded as a reduction to additional paid-in capital.

Warrant issued

A warrant to purchase 12,500 of the Company's common stock was issued on January 31, 2016 at an exercise price of $6.00 per share. The warrant was fully vested upon issuance and has a term of 1.25 years.

The following assumptions were used in the Black-Scholes-Merton pricing model to estimate the fair value of the warrant.

Expected stock volatility	80%
Risk free interest rate	0.97%
Expected years until exercise	1.25
Dividend yield	0.00%

The fair value was $15,476 and was recorded as increase to consulting expense and increase in additional paid in-capital.

A warrant to purchase 12,500 of the Company's common stock was issued on April 30, 2016, at an exercise price of $6.00 per share. The warrant was fully vested upon issuance and expires, if not exercised, on July 31, 2018.

The following assumptions were used in the Black-Scholes-Merton pricing model to estimate the fair value of the warrant.

Expected stock volatility	80%
Risk free interest rate	0.77%
Expected years until exercise	2.25
Dividend yield	0.00%

The fair value was $57,204 and was recorded as increase to consulting expense and increase in additional paid in-capital.

Warrants exercised

On June 7, 2016, when the five-day average of closing prices for the Company's common stock was $12.16 per share, 15,203 shares of the Company's common stock were issued pursuant to a cashless exercise of a warrant for 30,000 shares of the Company's common stock with an exercise price of $6.00 per share.

Stock based compensation

The 2014 Stock Incentive Plan (the "2014 Plan") authorized a total of 1,363,637 shares for option grants. The 2014 Plan provides for the following types of stock-based awards: incentive stock options; non-statutory stock options; restricted stock; and performance-based stock. The 2014 Plan, under which equity incentives may be granted to employees and directors under incentive and non-statutory agreements requires that the option price may not be less than the fair value of the stock at the date the option is granted. Option awards may not have a term exceeding 10 years from the grant date. As of June 30, 2016, the Company had 509,952 shares available for future grants under the 2014 Stock Incentive Plan.

Options granted generally have a five-year term and vest over a three-year period; one third the first year, one third the second year and the remaining third vest on a monthly basis in the third year.

The stock-based compensation expense recorded was allocated as follows:

	Three months ended June 30,		Six months ended June 30,	
	2016	2015	2016	2015
Operations and development costs	$ 55	$ 32	$ 106	$ 32
Business development and management costs	475	49	632	49
Total	$ 530	$ 81	$ 738	$ 81

The following assumptions were used in the Black-Scholes-Merton pricing model to estimate the fair value of the options.

Expected stock volatility	72% -80%
Risk free interest rate	0.94% - 1.77%
Expected years until exercise	2.50 - 3.50
Dividend yield	0.00%

No stock options were exercised during the three months or six months ended June 30, 2016.

Option modification

During the three months ended June 30, 2016, the Compensation Committee of the Board of Directors approved the modification of the terms of a stock option previously granted to a member of its Board of Directors to accelerate vesting and the waiver of the early termination of the option based upon the director's end of service to the Company. The modification resulted in additional compensation expense of $175,000.

10. Commitments and Contingencies

Purchase commitment

The Company issued a purchase order on September 18, 2015 to purchase equipment to be installed in the recycling plant being built in Nevada. An initial payment of $3,053,000 was made in September 2015 and recorded as equipment deposits on the condensed consolidated balance sheet. The remaining balance due on this equipment at June 30, 2016 is $611,000 and is expected to be paid upon commissioning of this equipment during the third quarter of 2016.

Interstate Battery Agreement commitment

Pursuant to the Interstate Battery Investor Rights Agreement, the Company has agreed to compensate Interstate Battery should either Stephen Clarke, the Company's current chief executive officer, or Selwyn Mould, the Company's current chief operating officer, no longer hold such positions or no longer devote substantially all of their business time and attention to the Company, whether as a result of resignation, death, disability or otherwise (such an event referred to as a "key-man event"). The Company has agreed to pay Interstate Battery $2,000,000, per occurrence, if either officer is subject to a key-man event during the two years following May 18,2016. The Company also agreed to pay Interstate Battery $2,000,000 if either or both officers are subject to a key-man event during the third year following May18, 2016

11. Subsequent Events

The Company has evaluated subsequent events through the date which the condensed consolidated financial statements were available to be issued.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cautionary Statement

The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes thereto contained elsewhere in this report. The information contained in this quarterly report on Form 10-Q is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this report and in our other filings with the Securities and Exchange Commission, or SEC, including our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 28, 2016, or our Annual Report.

In this report we make, and from time to time we otherwise make, written and oral statements regarding our business and prospects, such as projections of future performance, statements of management's plans and objectives, forecasts of market trends, and other matters that are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Statements containing the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimates," "projects," "believes," "expects," "anticipates," "intends," "target," "goal," "plans," "objective," "should" or similar expressions identify forward-looking statements, which may appear in documents, reports, filings with the SEC, news releases, written or oral presentations made by officers or other representatives made by us to analysts, stockholders, investors, news organizations and others, and discussions with management and other of our representatives.

Our future results, including results related to forward-looking statements, involve a number of risks and uncertainties, including those risks included in the section "Risk Factors" set forth in Part II, Item 1A of this report. No assurance can be given that the results reflected in any forward-looking statements will be achieved. Any forward-looking statement speaks only as of the date on which such statement is made. Our forward-looking statements are based upon assumptions that are sometimes based upon estimates, data, communications and other information from suppliers, government agencies and other sources that may be subject to revision. Except as required by law, we do not undertake any obligation to update or keep current either (i) any forward-looking statement to reflect events or circumstances arising after the date of such statement or (ii) the important factors that could cause our future results to differ materially from historical results or trends, results anticipated or planned by us, or which are reflected from time to time in any forward-looking statement.

General

We were formed as a Delaware corporation on June 20, 2014 for the purpose of engaging in the business of recycling lead through a novel, proprietary and patent-pending process that we developed and named "AquaRefining". Since our formation, we have focused our efforts on the development and limited testing of our AquaRefining process, the development of our business plan, the raise of our present working capital and the development of our initial lead acid battery, or LAB, recycling facility near Reno, Nevada. We have not commenced revenue-producing operations and, under our current plan of business, do not expect to do so until the fourth quarter of 2016.

Since our organization in 2014, we have engaged in the following financing transactions:

Convertible Note Placement. Prior to our initial public offering, we capitalized our operations with equity contributions and advances from our founders, our receipt of a $500,000 investment from Wirtz Manufacturing Co. Inc. and our receipt of $5.5 million of capital from our private placement sale of senior secured convertible promissory notes, which we refer to as our "convertible notes", in October 2014. Pursuant to the terms of our investment agreement with Wirtz Manufacturing Co. Inc., Wirtz exchanged its investment in our company for a convertible note sold in the October 2014 private placement. As a result, we had issued and outstanding convertible notes in the aggregate principal amount of $6.0 million, with accrued and unpaid interest as of August 5, 2015 in the amount of $279,678. All principal and accrued interest under the convertible notes converted into shares of our common stock at the close of our initial public offering on August 5, 2015.

Initial Public Offering. On July 31, 2015, we conducted an initial public offering of 6.6 million shares of our common stock, at the public offering price of $5.00 per share. After the payment of underwriter discounts and offering expenses, and after giving effect to the underwriters' exercise of its overallotment option on August 13, 2015 to purchase an additional 641,930 shares of our common stock at the offering price of $5.00 per share, we received net proceeds of approximately $32,862,172.

Pursuant to the terms of the above convertible notes, all principal and interest under the convertible notes automatically converted into shares of our common stock upon the completion of the initial public offering at the conversion price of $2.50 per share. As of the close of our initial public offering, all principal and interest, including $6 million of principal and $279,678 of accrued interest, under the convertible notes automatically converted into 2,511,871 shares of our common stock.

Green Bank Loan. On November 3, 2015, Aqua Metals Reno, Inc., our wholly-owned subsidiary, entered into a Loan Agreement with Green Bank, N.A. pursuant to which Green Bank provided us with a loan in the amount of $10 million. The loan proceeds will be applied towards the development of our Tahoe Reno Industrial Center, or TRIC, facility. The loan accrues interest at an annual rate of the Wall Street Journal Prime Rate Index plus a margin of 2.00% per year, adjusted quarterly, with a floor rate of 6.00% per year. Interest-only payments are due monthly for the first twelve months. Thereafter, principal and interest are due monthly and are fully amortized over 20 years. The loan is collateralized by the real estate, plant and fixtures at the TRIC facility and a certificate of deposit of $1.0 million at Green Bank. Additionally, the terms of the Loan Agreement contain various affirmative and negative covenants. Among them, Aqua Metals Reno, Inc. must maintain a minimum debt service coverage ratio of 1.25 to 1.0, a maximum debt-to-net worth ratio of 1.0 to 1.0 and a minimum current ratio of 1.5 to 1.0.

The loan is guaranteed by the United States Department of Agriculture Rural Development, or USDA, in the amount of 90% of the principal amount of the loan. We paid a guarantee fee to USDA in the amount of $270,000 at the time of closing of the Loan Agreement and we will be required to pay to USDA an annual renewal fee in the amount of 0.50% of the guaranteed portion of the outstanding principal balance of the loan as of December 31 of each year.

Interstate Battery Partnership. On May 18, 2016, we entered into definitive agreements with Interstate Battery System International, Inc. ("Interstate Battery") and other investors for the sale of approximately $15.1 million of our equity and debt securities, including a $10 million investment by Interstate Battery, the largest independent battery distributor in North America. We also entered into a supply agreement with Interstate Battery pursuant to which Interstate Battery will supply us with used LABs as feedstock for our AquaRefineries. The investment transactions closed on May 24, 2016.

At the closing of the investment transactions, we will enter into a supply agreement with Interstate Battery pursuant to which Interstate Battery will agree to sell to us, and we will agree to buy from Interstate Battery, used LABs. Interstate Battery will sell us used LABs on a cost-plus basis and the agreement subjects us and Interstate Battery to certain minimum purchase and sale requirements. We will grant Interstate Battery limited rights of first refusal to supply our future AquaRefineries. Our agreement with Interstate Battery is for an initial term of 18 months and will be subject to automatic renewals thereafter unless either party elects to terminate the agreement. The agreement allows each party the right to seek early termination based on certain commercial contingencies. The supply agreement contains representations, warranties and indemnities that are customary to commercial agreements of this nature.

Pursuant to the investment agreements with Interstate Battery, Interstate Battery agreed to:

- Purchase 702,247 shares of our common stock at $7.12 per share for the gross proceeds of approximately $5,000,000; and
- Loan us $5,000,000 pursuant to a secured convertible promissory in the original principal amount of $5,000,000. The note will bear interest at the rate of eleven percent (11%) per annum, compounding monthly, and all interest shall be payable upon the earlier of maturity or conversion of the principal amount. The outstanding principal is convertible into our common shares at a conversion price of $7.12 per share. Our obligations under the loan are secured by a second priority lien interest on our assets, other than our intellectual property. The loan will mature on May 18, 2019.

In connection with the agreements, we granted Interstate Battery warrants to purchase our common stock, including:

- a fully vested warrant to purchase 702,247 shares of our common stock, at an exercise price of $7.12 per share, expiring on May 24, 2018; and
- a warrant to purchase 1,605,131 shares of our common stock, at an exercise price of $9.00 per share, vesting on November 16, 2016 and expiring on May 24, 2019.

We granted Interstate Battery customary demand and piggyback registration rights, limited board observation rights over the next three years and limited preemptive rights allowing it to purchase its proportional share of certain future equity issuances by us over the next three years.

If Interstate Battery converts its convertible note and exercises both warrants in their entirety, it will own slightly less than 20% of the common stock of Aqua Metals at an average price per share of approximately $7.93.

We also entered into a definitive agreement with certain accredited investors to sell approximately $5.1 million of our common stock through National Securities Corporation as placement agent. Pursuant to this agreement, we have agreed to sell 719,333 of shares of our common stock, at the price of $7.12 per share, for the gross proceeds of approximately $5,121,650. We granted the investors certain demand and piggyback registration rights, including our best efforts commitment to register their shares for resale on or before August 1, 2016. We paid National Securities a commission of six percent (6%) on the sale of our common shares to the accredited investors. There are no commissions payable by us on the sale of our securities to Interstate Battery. The National Securities private placement closed on May 24, 2016.

Plan of Operations

Our plan of operations for the 12-month period following the date of this report is to complete construction and commence commercial operations at our initial recycling facility in TRIC. In May 2015, we purchased 11.73 acres of undeveloped land within TRIC for the purchase price of $1,047,503. We have substantially completed the construction of a 136,750 square foot lead acid battery, or LAB, recycling facility at our TRIC property.

As of the date of this report, we believe that interest in our first recycling facility and demand for our recycling capacity is strong. Consequently, we have implemented a plan to achieve production at the rate of 80 tons of recycled lead per day by the fourth quarter of 2016 and, over time, expand to 160 tons per day. Our TRIC facility is designed and is being constructed in order to accommodate a total of 32 AquaRefining modules and additional battery breaking and component separations equipment sufficient to support expansion to 160 tons of recycled lead per day.

Construction of the TRIC facility began on August 17, 2015 and is progressing with a completion expected in the third quarter of 2016. We began installing our first AquaRefining modules in June 2016 and expect to install a total of 16 AquaRefining modules to support an initial lead production capacity of 80 tons per day by the close of the fourth quarter of 2016.

As of the date of this report we believe that our cash is sufficient to achieve production at a rate of 80 tons of lead per day. Our goal is to increase our production of lead at our TRIC facility to 160 tons per day, subject to our receipt of required expansion funds, of which there can be no assurance.

Results of Operations

We were formed on June 20, 2014 and have not commenced revenue-producing operations. To date, our operations have consisted of the development and limited testing of our AquaRefining process, the development of our business plan, the raise of our present working capital and the development of our initial lead acid battery, or LAB, recycling facility near Reno, Nevada. The following table summarizes results of operations with respect to the items set forth below for the three and six months ended June 30, 2016 and 2015 together with the percentage change in those items (in thousands).

	Three months ended Jume 30,				Six months ended June 30,			
	2016	2015	Favorable (Unfavorable)	% Change	2016	2015	Favorable (Unfavorable)	% Change
Operations and development costs	$ 1,309	$ 422	$ (887)	-210.19%	$ 2,192	$ 635	$ (1,557)	-245.20%
Business development and management costs	1,516	640	(876)	-136.88%	2,811	1,112	(1,699)	-152.79%

Operations and development costs have more than tripled for both the comparative periods. The increase is due to the increased level of operations following the completion of our initial public offering in August 2015. Salary related expenses have more than tripled for both the three and six month periods compared to 2015, commensurate with a three-fold increase in head-count for the three and six months ended June 30, 2016. Our research and development expenses have increased by $0.1 million or 87% for the three months ended June 30, 2016 and $0.3 million or 188% for the six months ended June 30, 2016 corresponding to an increase in developmental activities over the prior year periods. Other increases include professional services, depreciation, insurance, travel and general overhead costs due to our increased activities.

Business development and management costs have also increased significantly. Salary related expenses increased by 80% and 82% for the three and six month periods ended June 30, 2016, respectively, while average headcount increased by 50% and 40% for the three and six month periods ended June 30, 2016 compared to the same periods in the previous year. The largest contributor to the difference between headcount and overall expense is an increase in stock based compensation expense. Professional services have increased by approximately $0.4 million and $0.7 million for the three and six month periods ending June 30, 2016, which include both third-party consulting and legal fees and primarily relates to being a publicly traded company during 2016 versus a private company during the related periods in 2015. Professional fees during the three and six-month period ended June 30, 2016 include a one-time $0.2 million charge due to the modification of a previously issued stock option to a former member of our Board of Directors that accelerated the vesting and waived the early termination of the option based upon the termination of his service to the Company due to his death. The remaining increase is due to increased travel, insurance and general overhead costs due to our increased activities compared to the prior year.

	Three months ended Jume 30,				Six months ended June 30,			
	2016	2015	Favorable (Unfavorable)	% Change	2016	2015	Favorable (Unfavorable)	% Change
Other expense (income)								
Increase in fair value of derivative liabilities	$ -	$ 1,603	$ 1,603	-	$ -	$ 5,499	$ 5,499	-
Interest expense	112	318	206	64.78%	115	634	519	81.86%
Interest income	(6)	(1)	5	-500.00%	(14)	(2)	12	-600.00%

We incurred approximately $1.6 million and $5.5 million of expense in the three and six months ending June 30, 2015, respectively, relating to an increase in the fair value of derivative liabilities related to our then-outstanding convertible notes and related financing warrants. The convertible notes were converted at the time of our IPO in August 2015 and, at the same time the derivative liability associated with the financing warrant was reclassified to additional paid-in capital. Therefore, there is no expense related to the derivative liabilities during the three and six months ending June 30, 2016. We incurred interest expense of approximately $0.3 million and $0.5 million during the three and six months ending June 30, 2015 related to our convertible notes, which, as noted above, converted at the time of our IPO. Interest during the three and six months ended June 30, 2016 relates primarily to amortization of debt issuance costs incurred in connection with both the $10.0 million notes payable and the Interstate Battery convertible note and accrual of the USDA guarantee fee on the $10.0 million note. Interest relating to the $10.0 million notes payable is being capitalized as part of the building cost of the TRIC facility.

Liquidity and Capital Resources

As of June 30, 2016, we had total assets of $57,128,000 and working capital of $22,799,000.

The following table summarizes our cash used in operating, investing and financing activities (in thousands):

	Six months ended June 30,	
	2016	2015
Net cash used in operating activities	(3,287)	(1,695)
Net cash used in investing activities	(8,259)	(1,211)
Net cash provided by financing activities	13,955	-

Net cash used in operating activities

Net cash used in operating activities for the six months ended June 30, 2016 and 2015 was $3.3 million and $1.7 million, respectively. Net cash used in operating activities during each of these periods consisted primarily of our net loss adjusted for noncash items such as depreciation, amortization, stock-based compensation charges, and noncash charges related to the mark-to-market valuation of our derivative liabilities (2015), as well as net changes in working capital.

Net cash used in investing activities

Net cash used in investing activities for the six months ended June, 2016 and 2015 was $8.3 million and $1.2 million, respectively. Net cash used in investing activities during each of these periods consists primarily of purchases of fixed assets related to the build out of our NV location and, to a lesser extent, our corporate headquarters.

Net cash provided by financing activities

Net cash provided by financing activities for the six months ended June 30, 2016 primarily consists of $9.1 million net proceeds from the issuance of common stock to Interstate Battery and other investors through our placement agent, National Securities Corporation; and $4.9 million net proceeds from the Interstate Battery convertible note.

As of the date of this report, we believe that our working capital is sufficient to fund our current business plan, including the completion of our initial recycling facility at TRIC and attainment of production at the rate of 80 tons of recycled lead per day. However, we may require additional capital to achieve the aforementioned milestones, the receipt of which there can be no assurance. In time, we intend to increase our production of lead at our TRIC facility to 160 tons per day, subject to our receipt of required expansion funds, of which there can be no assurance. In addition, we will require additional capital in order to fund our proposed development of additional AquaRefining recycling facilities. We intend to seek additional funds through various financing sources, including the sale of our equity and debt securities, licensing fees for our technology, joint ventures with capital partners and/or project financing of our recycling facilities. In addition, we will consider alternatives to our current business plan that may enable to us to achieve revenue producing operations and meaningful commercial success with a smaller amount of capital. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to further pursue our business plan and we may be unable to continue operations.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet financing arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risks

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Securities Exchange Act of 1934. Based on this evaluation, management concluded that our disclosure controls and procedures were effective as of June 30, 2016.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the three-month period ended June 30, 2016 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

We are, from time to time, subject to various claims and legal actions during the ordinary course of business. We are not currently party to any material litigation or material legal proceedings.

Item 1A. Risk Factors

Investing in our common stock involves a very high degree of risk. You should carefully consider the risks described below and all of the other information in our filings with the SEC before making any investment decisions regarding our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we do not know of or that we currently deem immaterial may also negatively affect our business, financial condition, operating results, and prospects. In that case, the market price of our common stock could decline, and you could lose all or part of your investment.

Risks Relating to Our Business

Since we have a limited operating history and have not commenced revenue-producing operations, it is difficult for potential investors to evaluate our business. We formed our corporation in June 2014 and have not commenced revenue-producing operations. To date, our operations have consisted of the development and limited testing of our AquaRefining process, the development of our business plan, the raise of our present working capital and the development of our initial LAB recycling facility near Reno, Nevada. Our limited operating history makes it difficult for potential investors to evaluate our technology or prospective operations. As an early stage company, we are subject to all the risks inherent in the initial organization, financing, expenditures, complications and delays in a new business. Investors should evaluate an investment in us in light of the uncertainties encountered by developing companies in a competitive environment. There can be no assurance that our efforts will be successful or that we will ultimately be able to attain profitability.

We may need additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all. As of June 30, 2016, we had total assets of $57.1 million and working capital of $22.8 million. As of the date of this report, we believe that we have working capital sufficient to fund our current business plan, including the completion of our initial recycling facility in TRIC and attainment of production at the rate of 80 tons of recycled lead per day. However, we may require additional capital over the next 12 months in order to meet these milestones, the receipt of which there can be no assurance. In time, we intend to increase our production of lead at our TRIC facility to 160 tons per day, subject to our receipt of required expansion funds, of which there can be no assurance. In addition, we will require additional capital in order to fund our proposed development of additional AquaRefining recycling facilities. We intend to seek additional funds through various financing sources, including the private sale of our equity and debt securities, licensing fees for our technology, joint ventures with capital partners and project financing of our recycling facilities. We will consider alternatives to our current business plan that may enable to us to achieve revenue producing operations and meaningful commercial success with a smaller amount of capital. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to further pursue our business plan and we may be unable to continue operations, in which case you may lose your entire investment.

Our business model is new and has not been proven by us or anyone else. We intend to engage in the business of producing recycled lead through a proprietary, patent-pending electro-chemical technology. While the production of recycled lead is an established business, to date all recycled lead has been produced by way of traditional smelting processes. To our knowledge, no one has successfully produced recycled lead in commercial quantities other than by way of smelting. We have tested our AquaRefining process on a small scale and to a limited degree, however there can be no assurance that we will be able to produce lead in commercial quantities at a cost of production that will provide us with an adequate profit margin. The uniqueness of our AquaRefining process presents potential risks associated with the development of a business model that is untried and unproven.

While the testing of our AquaRefining process has been successful to date, there can be no assurance that we will be able to replicate the process, along with all of the expected economic advantages, on a large commercial scale. As of the date of this report, we have built and operated both a small-scale unit of our AquaRefining process and a full size production prototype. Through the operation of such units we have successfully produced 99.99% pure lead on a limited scale. While we believe that our development and testing to date has proven the concept of our AquaRefining process, we have not undertaken the build-out or operation of a large-scale facility capable of recycling LABs and producing lead in large commercial quantities. We have commenced the development of our initial LAB recycling facility in TRIC which we expect to complete in the fourth quarter of 2016 and at which point we expect to install a total of 16 AquaRefining modules to support an initial lead production capacity of 80 ton per day by the close of the fourth quarter of 2016. However, there can be no assurance that as we commence large scale manufacturing or operations at our TRIC facility that we will not incur unexpected costs or hurdles that might restrict the desired scale of our intended operations or negatively impact our projected gross profit margin.

Our intellectual property rights may not be adequate to protect our business. We currently do not hold any patents for our products. To date, we have filed five international applications, two U.S. patent applications, and have twenty foreign applications pending, relating to certain elements of the technology underlying our AquaRefining process and related apparatus and chemical formulations. Although we expect to continue filing, where applicable, patent applications related to our technology, no assurances can be given that any patent will be issued on our patent applications or any other application that we may file in the future or that, if such patents are issued, they will be sufficiently broad to adequately protect our technology. In addition, we cannot assure you that any patents that may be issued to us will not be challenged, invalidated, or circumvented.

Even if we are issued patents, they may not stop a competitor from illegally using our patented processes and materials. In such event, we would incur substantial costs and expenses, including lost time of management in addressing and litigating, if necessary, such matters. Additionally, we rely upon a combination of trade secret laws and nondisclosure agreements with third parties and employees having access to confidential information or receiving unpatented proprietary know-how, trade secrets and technology to protect our proprietary rights and technology. These laws and agreements provide only limited protection. We can give no assurance that these measures will adequately protect us from misappropriation of proprietary information.

Our processes may infringe on the intellectual property rights of others, which could lead to costly disputes or disruptions. The applied science industry is characterized by frequent allegations of intellectual property infringement. Though we do not expect to be subject to any of these allegations, any allegation of infringement could be time consuming and expensive to defend or resolve, result in substantial diversion of management resources, cause suspension of operations or force us to enter into royalty, license, or other agreements rather than dispute the merits of such allegation. If patent holders or other holders of intellectual property initiate legal proceedings, we may be forced into protracted and costly litigation. We may not be successful in defending such litigation and may not be able to procure any required royalty or license agreements on acceptable terms or at all.

Our business strategy includes licensing arrangements and entering into joint ventures and strategic alliances. Failure to successfully integrate such licensing arrangements, joint ventures, or strategic alliances into our operations could adversely affect our business. We propose to commercially exploit our AquaRefining process, in part, by licensing our technology to third parties and entering into joint ventures and strategic relationships with parties involved in the manufacture and recycling of LABs. Licensing programs, joint ventures and strategic alliances may involve significant other risks and uncertainties, including distraction of management's attention away from normal business operations, insufficient revenue generation to offset liabilities assumed and expenses associated with the transaction, and unidentified issues not discovered in our due diligence process, such as product quality, technology issues and legal contingencies. In addition, we may be unable to effectively integrate any such programs and ventures into our operations. Our operating results could be adversely affected by any problems arising during or from any licenses, joint ventures or strategic alliances.

If we are unable to manage future expansion effectively, our business, operations and financial condition may suffer significantly, resulting in decreased productivity. If our AquaRefining process proves to be commercially valuable, it is likely that we will experience a rapid growth phase that could place a significant strain on our managerial, administrative, technical, operational and financial resources. Our organization, procedures and management may not be adequate to fully support the expansion of our operations or the efficient execution of our business strategy. If we are unable to manage future expansion effectively, our business, operations and financial condition may suffer significantly, resulting in decreased productivity.

Certain industry participants may have the ability to restrict our access to used LABs and otherwise focus significant competitive pressure on us. We believe that our primary competition will come from operators of existing smelters and other parties invested in the existing supply chain for smelting, both of which may resist the change presented by our AquaRefining process. Competition from such incumbents may come in the form of restricted access to used LABs. We believe that LAB manufacturers who also maintain their own smelting operations control approximately 50% of the market for used LABs. We will require access to used LABs at market prices in order to carry out our business plan. If those LAB manufacturers and others involved in the reverse supply chain for used LABs attempt to restrict our access to used LABs that may adversely affect our prospects and future growth. There can be no assurance that we will be able to effectively withstand the pressures applied by our competition.

We may experience significant fluctuations in raw material prices and the price of our principal product, either of which could have a material adverse effect on our liquidity, growth prospects and results of operations. Spent LAB's are our primary raw material and we believe that in recent years the cost of used LABS has been volatile at times. Our principal product, recycled lead, has also experienced price volatility from time to time as well. For example, the market price of lead on the London Metal Exchange, or LME, rose from a trading range of $1,000 to $1,200 per metric ton during 2005 to $2,200 per metric ton during 2014. In 2015, the LME market price for lead ranged from $1,554 to $2,139 per ton. The price per ton of lead on January 1, 2015 was $1,844 while the price on December 31, 2015 was $1,801 per ton. The price per ton of lead on June 30, 2016 was $1,780. While we intend to pursue supply and tolling arrangements and hedge transactions as appropriate to offset any price volatility, the volatile nature of prices for used LABs and recycled lead could have an adverse impact on our liquidity, growth prospects and results of operations.

The global economic conditions could negatively affect our prospects for growth and operating results. Our prospects for growth and operating results will be directly affected by the general global economic conditions of the industries in which our suppliers, partners and customer groups operate. We believe that the market price of our principal product, recycled lead, is relatively volatile and reacts to general global economic conditions. Lead prices decreased from $2,139 per ton on May 5, 2015 to a low of $1,554 per ton on November 23, 2015 because of fluctuations in the market. A month later, the price per ton increased back up to $1,801 per ton and, as noted above, the price per ton was $1,780 on June 30, 2016. Our business will be highly dependent on the economic and market conditions in each of the geographic areas in which we operate. These conditions affect our business by reducing the demand for LABs and decreasing the price of lead in times of economic down turn and increasing the price of used LABs in times of increasing demand of LABs and recycled lead. There can be no assurance that global economic conditions will not, at times, negatively impact our liquidity, growth prospects and results of operations.

We are subject to the risks of conducting business outside the United States. A part of our strategy involves our pursuit of growth opportunities in certain international market locations. We intend to pursue the development and ownership of recycling facilities in certain foreign jurisdictions, including Mexico, China and India, among others countries, however it is more likely that we will enter into licensing or joint venture arrangements with local partners who will be primarily responsible for the day-to-day operations. Any expansion outside of the US will require significant management attention and financial resources to successfully develop and operate any such facilities, including the sales, supply and support channels, and we cannot assure you that we will be successful or that our expenditures in this effort will not exceed the amount of any resulting revenues. Our international operations expose us to risks and challenges that we would otherwise not face if we conducted our business only in the United States, such as:

- increased cost of enforcing our intellectual property rights;
- heightened price sensitivities from customers in emerging markets;
- our ability to establish or contract for local manufacturing, support and service functions;
- localization of our LABs and components, including translation into foreign languages and the associated expenses;
- compliance with multiple, conflicting and changing governmental laws and regulations;
- foreign currency fluctuations;
- laws favoring local competitors;
- weaker legal protections of contract terms, enforcement on collection of receivables and intellectual property rights and mechanisms for enforcing those rights;
- market disruptions created by public health crises in regions outside the United States;
- difficulties in staffing and managing foreign operations, including challenges presented by relationships with workers' councils and labor unions;
- issues related to differences in cultures and practices; and
- changing regional economic, political and regulatory conditions.

Government regulation and environmental, health and safety concerns may adversely affect our business. Our operations in the United States will be subject to the Federal, State and local environmental, health and safety laws applicable to the reclamation of lead acid batteries. Depending on how any particular operation is structured, our facilities will probably have to obtain environmental permits or approvals to operate, including those associated with air emissions, water discharges, and waste management and storage. We may face opposition from local residents or public interest groups to the installation and operation of our facilities. Failure to secure (or significant delays in securing) the necessary approvals could prevent us from pursuing some of our planned operations and adversely affect our business, financial results and growth prospects. In addition to permitting requirements, our operations are subject to environmental health, safety and transportation laws and regulations that govern the management of and exposure to hazardous materials such as the lead and acids involved in battery reclamation. These include hazard communication and other occupational safety requirements for employees, which may mandate industrial hygiene monitoring of employees for potential exposure to lead. Failure to comply with these requirements could subject our business to significant penalties (civil or criminal) and other sanctions that could adversely affect our business.

The nature of our operations involve risks, including the potential for exposure to hazardous materials such as lead, that could result in personal injury and property damage claims from third parties, including employees and neighbors, which claims could result in significant costs or other environmental liability. Our operations also pose a risk of releases of hazardous substances, such as lead or acids, into the environment, which can result in liabilities for the removal or remediation of such hazardous substances from the properties at which they have been released, liabilities which can be imposed regardless of fault, and our business could be held liable for the entire cost of cleanup even if we were only partially responsible. Like any manufacturer, we are also subject to the possibility that we may receive notices of potential liability in connection with materials that were sent to third-party recycling, treatment, and/or disposal facilities under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and comparable state statutes, which impose liability for investigation and remediation of contamination without regard to fault or the legality of the conduct that contributed to the contamination, and for damages to natural resources. Liability under CERCLA is retroactive, and, under certain circumstances, liability for the entire cost of a cleanup can be imposed on any responsible party.

As our business expands outside of the United States, our operations will be subject to the environmental, health and safety laws of the countries where we do business, including permitting and compliance requirements that address the similar risks as do the laws in the United States, as well as international legal requirements such as those applicable to the transportation of hazardous materials. Depending on the country or region, these laws could be as stringent as those in the US, or they could be less stringent or not as strictly enforced. In some countries in which we are interested in expanding our business, such as Mexico and China, the relevant environmental regulatory and enforcement frameworks are in flux and subject to change. Compliance with these requirements will cause our business to incur costs, and failure to comply with these requirements could adversely affect our business.

In the event we are unable to present and operate our AquaRefining process and operations as safe and environmentally responsible, we may face opposition from local governments, residents or public interest groups to the installation and operation of our facilities.

Control by management may limit your ability to influence the outcome of director elections and other transactions requiring stockholder approval. As of June 30, 2016, our directors and executive officers beneficially own approximately 17.4% of our outstanding common stock. As a result, in addition to their board seats and offices, such persons will have significant influence over corporate actions requiring stockholder approval, including the following actions:

- to elect or defeat the election of our directors;
- to amend or prevent amendment of our certificate of incorporation or bylaws;
- to effect or prevent a merger, sale of assets or other corporate transaction; and
- to control the outcome of any other matter submitted to our stockholders for vote.

Such persons' stock ownership may discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company, which in turn could reduce our stock price or prevent our stockholders from realizing a premium over our stock price.

Risks Related to Owning Our Common Stock

Prior to the completion of our initial public offering in July 2015, there was no public trading market for our common stock. Our common stock has traded on the Nasdaq Capital Market, under the symbol "AQMS", since July 31, 2015. Since that date, our common stock has been relatively thinly traded. There can be no assurance that we will be able to successfully develop a liquid market for our common shares. The stock market in general, and early stage public companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of such companies. If we are unable to develop a market for our common shares, you may not be able to sell your common shares at prices you consider to be fair or at times that are convenient for you, or at all.

We are an "emerging growth company" under the JOBS Act of 2012 and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors. We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements;
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments; and
- extended transition periods available for complying with new or revised accounting standards.

We have chosen to "opt out" of the extended transition periods available for complying with new or revised accounting standards, but we intend to take advantage of all of the other benefits available under the JOBS Act, including the exemptions discussed above. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an "emerging growth company" for up to five years, although we will lose that status sooner if our revenues exceed $1 billion, if we issue more than $1 billion in non-convertible debt in a three-year period, or if the market value of our common stock that is held by non-affiliates exceeds $700 million as of any June 30.

Our status as an "emerging growth company" under the JOBS Act may make it more difficult to raise capital as and when we need it. Because of the exemptions from various reporting requirements provided to us as an "emerging growth company," we may be less attractive to investors and it may be difficult for us to raise additional capital as and when we need it. Investors may be unable to compare our business with other companies in our industry if they believe that our reporting is not as transparent as other companies in our industry. If we are unable to raise additional capital as and when we need it, our financial condition and results of operations may be materially and adversely affected.

We have not paid dividends in the past and have no immediate plans to pay dividends. We plan to reinvest all of our earnings, to the extent we have earnings, in order to develop our recycling centers and cover operating costs and to otherwise become and remain competitive. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend. Therefore, you should not expect to receive cash dividends on our common stock.

Shares eligible for future sale may adversely affect the market for our common stock. Of the 15,574,225 shares of our common stock outstanding as of the date of this report, approximately 12,167,310 shares are held by "non-affiliates" and are freely tradable without restriction pursuant to Rule 144. In addition, we have filed with the SEC a Registration Statement on Form S-3 for purposes of registering the resale of 4,431,205 share of restricted common stock sold in our May 2016 financing, including 3,009,625 shares of common stock issuable to Interstate Battery upon exercise of its warrants and conversion of its convertible note. Any substantial sale of our common stock pursuant to Rule 144 or pursuant to any resale prospectus may have a material adverse effect on the market price of our common stock.

Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable. Provisions of our certificate of incorporation and bylaws and applicable provisions of Delaware law may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our certificate of incorporation and bylaws:

- limit who may call stockholder meetings;
- do not permit stockholders to act by written consent;
- do not provide for cumulative voting rights; and
- provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

In addition, Section 203 of the Delaware General Corporation Law may limit our ability to engage in any business combination with a person who beneficially owns 15% or more of our outstanding voting stock unless certain conditions are satisfied. This restriction lasts for a period of three years following the share acquisition. These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

Our bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with the Company. Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action asserting a claim against us or any our directors, officers or other employees arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws, or (iv) any action asserting a claim against us or any our directors, officers or other employees governed by the internal affairs doctrine. This forum selection provision in our bylaws may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or any our directors, officers or other employees.

Item 5. Other Information.

On August 8, 2016, we entered into amendments to the executive employment agreements with our four senior executive officers for purposes of increasing the annual salary of Stephen Clarke to $410,000, Selwyn Mould to $400,000, and Thomas Murphy and Steve Cotton to $380,000 each. The amendments to the executive employment agreements are filed as exhibits to this report.

Item 6. Exhibits

Exhibit No.	Description	Method of Filing
3.1	First Amended and Restated Certificate of Incorporation of the Registrant	Incorporated by reference from the Registrant's Registration Statement on Form S-1 filed on July 22, 2015.
3.2	Amended and Restated Bylaws of the Registrant	Incorporated by reference from the Registrant's Registration Statement on Form S-1 filed on June 9, 2015.
3.3	Certificate of Amendment to First Amended and Restated Certificate of Incorporation of the Registrant	Incorporated by reference from the Registrant's Registration Statement on Form S-1 filed on June 9, 2015.
4.1	Convertible Term Note issued by Aqua Metals, Inc. to Interstate Emerging Investments, LLC dated May 24, 2016	Filed electronically herewith
4.2	Warrant to Purchase Common Stock issued by Aqua Metals, Inc. to Interstate Emerging Investments, LLC dated May 24, 2016 (Two Year)	Filed electronically herewith
4.3	Warrant to Purchase Common Stock issued by Aqua Metals, Inc. to Interstate Emerging Investments, LLC dated May 24, 2016 (Three Year)	Filed electronically herewith
10.1	Stock Purchase Agreement between Aqua Metals, Inc. and Interstate Emerging Investments, LLC dated May 18, 2016	Filed electronically herewith
10.2	Stock purchase agreement between Aqua Metals, Inc. and the Purchasers, named therein dated May 18, 2016	Filed electronically herewith
10.3	Registration rights agreement between Aqua Metals, Inc. and the Purchasers, named therein dated May 18, 2016	Filed electronically herewith
10.4	Investor Rights Agreement between Aqua Metals, Inc. and Interstate Emerging Investments, LLC dated May 18, 2016	Filed as an exhibit to the Registrant's Registration Statement on Form S-3 filed on August 1, 2016.
10.5	Credit Agreement between Aqua Metals, Inc. and Interstate Emerging Investments, LLC dated May 18, 2016	Filed electronically herewith
10.6	Amendment No. 1 dated August 8, 2016 to Executive Employment Agreement dated January 15, 2015 between Aqua Metals, Inc. and Stephen R. Clarke	Filed electronically herewith
10.7	Amendment No. 1 dated August 8, 2016 to Executive Employment Agreement dated January 15, 2015 between Aqua Metals, Inc. and Thomas Murphy	Filed electronically herewith
10.8	Amendment No. 1 dated August 8, 2016 to Executive Employment Agreement dated January 15, 2015 between Aqua Metals, Inc. and Selwyn Mould	Filed electronically herewith
10.9	Amendment No. 1 dated August 8, 2016 to Executive Employment Agreement dated January 15, 2015 between Aqua Metals, Inc. and Steve Cotton	Filed electronically herewith
31.1	Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed electronically herewith
31.2	Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed electronically herewith
32.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).	Filed electronically herewith

101.INS	XBRL Instance Document	Filed electronically herewith
101.SCH	XBRL Taxonomy Extension Schema Document	Filed electronically herewith
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	Filed electronically herewith
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	Filed electronically herewith
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	Filed electronically herewith
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	Filed electronically herewith

SIGNATURES

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AQUA METALS, INC.

Date: August 10, 2016

By: */s/ Stephen R. Clarke*
Stephen R. Clarke,
President and Chief Executive Officer

Date: August 10, 2016

By: */s/ Thomas Murphy*
Thomas Murphy,
Chief Financial Officer

Exhibit 4.1

CONVERTIBLE TERM NOTE

$5,000,000.00 Dallas, Texas May 24, 2016

FOR VALUE RECEIVED, the undersigned, AQUA METALS, INC., a Delaware corporation (herein called "**Borrower**"), hereby promises to pay to INTERSTATE EMERGING INVESTMENTS, LLC or its permitted assigns (herein called "**Lender**"), the principal sum of FIVE MILLION AND 00/100 Dollars ($5,000,000.00), together with interest on the unpaid principal balance thereof as hereinafter set forth, both principal and interest payable as herein provided in lawful money of the United States of America at the offices of Lender under the Credit Agreement, or at such other place as from time to time may be designated by the holder of this Convertible Term Note.

This Convertible Term Note (a) is issued and delivered under that certain Credit Agreement dated as of May 18, 2016 among Borrower and Lender (herein, as from time to time supplemented, amended or restated, called the "**Credit Agreement**"), and is a "**Convertible Term Note**" as defined therein, (b) is subject to the terms and provisions of the Credit Agreement, which contains provisions for payments and prepayments hereunder, conversion of principal and interest hereunder into common stock of Borrower, and acceleration of the maturity hereof upon the happening of certain stated events, and (c) is secured by and entitled to the benefits of certain Security Documents (as identified and defined in the Credit Agreement). Payments on this Convertible Term Note shall be made and applied as provided herein and in the Credit Agreement. Reference is hereby made to the Credit Agreement for a description of certain rights, limitations of rights, obligations and duties of the parties hereto and for the meanings assigned to terms used and not defined herein and to the Security Documents for a description of the nature and extent of the security thereby provided and the rights of the parties thereto.

Unless earlier converted into common stock of Borrower, the principal amount of this Convertible Term Note, together with all interest accrued hereon, shall be due and payable in full on the Maturity Date and otherwise as provided in the Credit Agreement. Interest on this Convertible Term Note shall be payable as provided in the Credit Agreement.

Notwithstanding the foregoing paragraph and all other provisions of this Convertible Term Note, in no event shall the interest payable hereon, whether before or after maturity, exceed the maximum amount of interest which, under applicable Law, may be contracted for, charged, or received on this Convertible Term Note, and this Convertible Term Note is expressly made subject to the provisions of the Credit Agreement which more fully set out the limitations on how interest accrues hereon. In the event applicable Law provides for an interest ceiling under Chapter 303 of the Texas Finance Code (the "**Texas Finance Code**") as amended, for that day, the ceiling shall be the "weekly ceiling" as defined in the Texas Finance Code and shall be used in this Convertible Term Note for calculating the Maximum Rate and for all other purposes. The term "applicable law" as used in this Convertible Term Note shall mean the Laws of the State of Texas or the Laws of the United States, whichever Laws allow the greater interest, as such Laws now exist or may be changed or amended or come into effect in the future.

If this Convertible Term Note is placed in the hands of an attorney for collection after default, or if all or any part of the indebtedness represented hereby is proved, established or collected in any court or in any bankruptcy, receivership, debtor relief, probate or other court proceedings, Borrower and all endorsers, sureties and guarantors of this Convertible Term Note jointly and severally agree to pay reasonable attorneys' fees and collection costs to the holder hereof in addition to the principal and interest payable hereunder.

Borrower and all endorsers, sureties and guarantors of this Convertible Term Note hereby severally waive demand, presentment, notice of demand and of dishonor and nonpayment of this Convertible Term Note, protest, notice of protest, notice of intention to accelerate the maturity of this Convertible Term Note, declaration or notice of acceleration of the maturity of this Convertible Term Note, diligence in collecting, the bringing of any suit against any party and any notice of or defense on account of any extensions, renewals, partial payments or changes in any manner of or in this Convertible Term Note or in any of its terms, provisions and covenants, or any releases or substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

[*Remainder of page intentionally left blank*]

This Convertible Term Note and the rights and duties of the parties hereto shall be governed by the Laws of the State of Texas (without regard to principles of conflicts of law), except to the extent the same are governed by applicable federal Law.

THIS CONVERTIBLE TERM NOTE IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN INTERCREDITOR AGREEMENT BETWEEN LENDER AND GREEN BANK, N.A. DATED AS OF THE DATE HEREOF.

AQUA METALS, INC.

By: /s/ Stephen R. Clarke
Name: Stephen R. Clarke
Title: President and Chief Executive Officer

NEITHER THIS WARRANT, NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT (COLLECTIVELY, THE "SECURITIES"), HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THIS WARRANT IS SUBJECT TO THE TRANSFER RESTRICTIONS SET FORTH HEREIN.

AQUA METALS, INC.

Warrant to Purchase Common Stock

Warrant No.: 2016-1

Date of Issuance: May 24, 2016 ("**Issuance Date**")

Aqua Metals, Inc., a Delaware corporation (the "**Company**"), certifies that, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Interstate Emerging Investments, LLC, a Delaware limited liability company, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time on or after the date hereof (the "**Exercisability Date**"), but not after 6:30 p.m., New York Time, on the Expiration Date (as defined below), 702,247 fully paid and nonassessable shares of Common Stock (as defined below) (the "**Warrant Shares**"). The number of Warrant Shares purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as described herein. Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 17.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(c)), this Warrant may be exercised by the Holder on any day on or after the Exercisability Date, in whole or in part (but not as to fractional shares), by delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. The Holder may pay the Exercise Price in one of the following manners:

(i) Cash Exercise. The Holder may make payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash via wire transfer of immediately available funds (a "**Cash Exercise**").

(ii) Cashless Exercise. If an Exercise Notice is delivered at a time when a registration statement permitting the Holder to resell the Warrant Shares is not then effective or the prospectus forming a part thereof is not then available to the Holder for the resale of the Warrant Shares, then the Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows (a "**Cashless Exercise**"):

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing prices for the five Trading Days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

The term "**Exercise Delivery Documents**" as used herein refers to (i) in the case of a Cash Exercise, the Exercise Notice and accompanying payment; and (ii) in the case of a Cashless Exercise, the Exercise Notice.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a Cashless Exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Issuance Date.

The Holder shall not be required to surrender this Warrant in order to effect an exercise hereunder; provided, however, that in the event that this Warrant is exercised in full or for the remaining unexercised portion hereof, the Holder shall deliver this Warrant to the Company for cancellation within a reasonable time after such exercise. Any Warrant Shares issued hereunder shall be in uncertificated, book-entry form, as permitted by the Company's Bylaws and the Delaware General Corporation Law. On or before the third Trading Day following the date on which the Company has received all of the Exercise Delivery Documents (the "**Share Delivery Date**"), the Company shall deliver (or cause the Company's transfer agent for the Common Stock (the "**Transfer Agent**") to deliver) to the Holder a screen shot of the Transfer Agent's records or such other instrument as the Transfer Agent shall typically issue in such circumstance indicating the registration of transfer to the Holder by book-entry of the number of shares of Common Stock issuable to the Holder upon such exercise of the Warrant (an "**Ownership Notice**"). The Transfer Agent's records and any Ownership Notices shall contain the legend set forth in Section 16 (or an equivalent notation reflecting the transfer restrictions described in such legend) until such time as the legend may be removed in accordance with Section 16. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares to such Holder. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three Trading Days after any such submission and at its own expense, issue a new Warrant (in accordance with Section 7(e)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant has been and/or is being exercised. The Company shall pay any and all taxes and other expenses of the Company (including overnight delivery charges) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means $7.12 per share of Common Stock, subject to adjustment as provided herein.

(c) Limitations on Exercises. Notwithstanding anything contained elsewhere in this Warrant to the contrary, the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the Holder (together with the Holder's Affiliates, and any other persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of 19.99% of the outstanding shares of Common Stock (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitation, the "**Beneficial Ownership Cap**"). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock that would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, the Three Year Warrant, the Convertible Term Note any other securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 1(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and regulations promulgated thereunder. In addition, for purposes of this Section 1(c), "group" has the meaning set forth in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Notwithstanding anything contained elsewhere in this Warrant to the contrary, the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the cumulative aggregate of all exercises or conversions as a whole under this Warrant, the Three Year Warrant and the Convertible Term Note, as the case may be, together with the issuance of 702,247 shares of Common Stock pursuant to the Stock Purchase Agreement, would result in the issuance of shares of Common Stock (including, for the avoidance of doubt, any Warrant Shares issued under this Warrant, the Three Year Warrant and the Convertible Term Note) that (i) have, or will have upon issuance, voting power in excess of 19.99% of the voting power of the Common Stock outstanding immediately before the Issuance Date or (ii) represent, or will represent upon issuance, in excess of 19.99% of the number of shares of Common Stock outstanding immediately before the Issuance Date (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitations (i) and (ii), the "**Total Issuance Cap**"). The term "**Cap**" as used herein refers to either the Beneficial Ownership Cap or the Total Issuance Cap, whichever may be applicable. To the extent that any Beneficial Ownership Cap contained in this Section 1(c) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of an Exercise Notice shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable. For purposes of this Section 1(c), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the United States Securities and Exchange Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent notice by the Company or the Transfer Agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the request of the Holder, the Company shall promptly, and in any event within one Trading Day of such request, confirm to the Holder the number shares of Common Stock then outstanding.

(d) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share that the Holder would otherwise be entitled to purchase upon such exercise, the Company shall round up to the next whole share.

2 . ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES . The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Issuance Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Par Value. Notwithstanding anything to the contrary in this Warrant, in no event shall the Exercise Price be reduced below the par value of the Company's Common Stock.

3. FUNDAMENTAL TRANSACTIONS.

(a) If, at any time while this Warrant is outstanding, there occurs any Fundamental Transaction (including, without limitation, one pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, in lieu of the shares of the Common Stock (or other securities, cash assets or other property purchasable upon the exercise of the Warrant prior to such Fundamental Transaction), the same amount and kind of shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) that the Holder would have been entitled to receive upon the consummation of such Fundamental Transaction had this Warrant been exercised immediately prior to the record date for such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. Upon the occurrence of any Fundamental Transaction, the Successor Entity, if any, shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and any adjustment under this Section 3 shall be without duplication for any adjustment or distribution made under Section 2.

(b) In the event that the Company at any time grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**") the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant), immediately before the record date for the grant, issuance or sale of such Purchase Rights, or, if no such record date is established, the date as of which the record holders of shares of Common Stock are determined for the grant, issuance or sale of such Purchase Rights.

4. RESERVATION OF WARRANT SHARES. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of shares of Common Stock which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive or any other contingent purchase rights of Persons other than the Holder (taking into account the adjustments and restrictions in Sections 2 and 3). Such reservation shall comply with the provisions of Section 1. The Company covenants that all shares of Common Stock so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such actions as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed. If, notwithstanding the foregoing, and not in limitation thereof, at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all this Warrant (without regard to any limitations on exercise contained herein) (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this entire Warrant. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

5 . WARRANT HOLDER NOT DEEMED A STOCKHOLDER; LIMITATION ON LIABILITY . Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

6. REGISTRATION AND REISSUANCE OF WARRANTS.

(a) Registration of Warrant. The Company shall register this Warrant, upon the records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company shall also register any transfer, exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.

(b) Transfer of Warrant. This Warrant may not be offered for sale, sold, transferred or assigned without the consent of the Company, and only in accordance with applicable securities laws. Subject to applicable securities laws, if this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company together with all applicable transfer taxes, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(e)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(e)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(c) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(e)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(d) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company together with all applicable transfer taxes, for a new Warrant or Warrants (in accordance with Section 7(e)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that the Company shall not be required to issue Warrants for fractional shares of Common Stock hereunder.

(e) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant shall (i) be of like tenor with this Warrant, (ii) represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(b) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) have the same rights and conditions as this Warrant.

7. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with the information set forth in the Warrant Register. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including, in reasonable detail, a description of such action and the reason or reasons therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and; provided, that in each case, such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

8. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, 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 Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall use all reasonable efforts to take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant and (iii) shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Warrants, the Required Reserve Amount. If the Company is restricted by the Principal Market from issuing and delivering the lesser of the (i) Beneficial Ownership Cap or (ii) Total Issuance Cap, then the Company shall use its best efforts to obtain the approval of the requisite holders of the issued and outstanding voting capital stock of the Company required by the listing requirements of the Principal Market.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

10. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware.

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two Trading Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within five Trading Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Trading Days submit via facsimile the disputed determination of the Exercise Price or the disputed arithmetic calculation of the Warrant Shares to an independent, outside accountant. The Company shall cause the accountant to perform the determinations or calculations and notify the Company and the Holder of the results no later than 10 Trading Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the accountant will be borne by the Company unless the accountant determines that the Holder failed to act in good faith in its determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, in which case the expenses of the accountant will be borne by the Holder.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder may cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to seek an injunction restraining any breach.

14. SUCCESSORS AND ASSIGNS. This Warrant shall bind and inure to the benefit of and be enforceable by the Company and the Holder and their respective permitted successors and assigns.

15. LEGENDS. The Holder understands that the Warrant and the Warrant Shares issuable and deliverable upon exercise of this Warrant have not been registered pursuant to the provisions of the Securities Act, and the Warrant or Warrant Shares will bear the following restrictive legend (in addition to any legend required under applicable state securities laws):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

The Company, at its sole cost, shall remove the legend described in Section 15 (or instruct the Transfer Agent to so remove such legend) from the certificates evidencing the Warrant and Warrant Shares, as applicable, if (A) such Warrant Shares are sold pursuant to an effective registration statement under the Securities Act, (B) such Warrant or Warrant Shares, as applicable, are sold or transferred pursuant to Rule 144 (if the transferor is not an Affiliate of the Company), or (C) such Warrant or Warrant Shares, as applicable, are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable) as to such securities and without volume or manner of sale restrictions. In connection with a sale of the Warrant or Warrant Shares, as applicable, by any Holder in reliance on Rule 144, such Holder or its broker shall deliver to the Transfer Agent and the Company a customary broker representation letter providing to the transfer agent and the Company any information the Company deems reasonably necessary to determine that the sale of the Warrant or Warrant Shares, as applicable, is made in compliance with Rule 144, including, where and as may be appropriate, a certification that such Holder is not an Affiliate of the Company and regarding the length of time the Warrant or Warrant Shares, as applicable, have been held. Upon receipt of such representation letter, the Company shall promptly remove the legend refereed to in this Section 15 from the Warrant or direct its Transfer Agent to remove the legend referred to in this Section 15 from the Warrant Shares from the appropriate book-entry accounts maintained by the Transfer Agent, in each case within two (2) Business Days, and the Company shall bear all costs associated therewith. If a Holder is not an Affiliate of the Company and has held the Warrant or Warrant Shares, as applicable, for at least one year, if the book-entry account of such Warrant Shares or certificate for the Warrant still bears the legend referred to in this Section 15, the Company agrees, upon request of Purchaser, to take all steps necessary to effect the removal of the legend described in this Section 15 within two (2) Business Days from the appropriate book-entry accounts maintained by the Transfer Agent or the Warrant, and the Company shall bear all costs associated therewith, regardless of whether the request is made in connection with a sale or otherwise, so long the Holder provides to the Company any information the Company deems reasonably necessary to determine that the legend is no longer required under the Securities Act or applicable state laws, including (if there is no such registration statement), where and as may be appropriate, a certification that such Holder is not an Affiliate of the Company and regarding the length of time the Warrant or Warrant Shares, as applicable, have been held.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

(b) "**Bloomberg**" means Bloomberg LP or, if Bloomberg ceases to provide quotations for the Common Stock, such other nationally recognized quotation service as the Company shall select.

(c) "**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Dallas, Texas are authorized or required by Law to be closed for business.

(d) "**Common Stock**" means (i) the Company's shares of Common Stock, $0.001 par value per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) "**Convertible Term Note**" means that certain convertible promissory note, dated May 23, 2016, by and between the Company and the Holder, and all renewals, replacements, amendments, modifications and extensions thereof, such note issued pursuant to Section 2.1 of that certain Credit Agreement, dated May 18, 2016, by and between the Company and the Holder.

(f) "**Eligible Market**" means The New York Stock Exchange, Inc., the NYSE MKT, The Nasdaq Stock Market, the NASDAQ Global Select Market or the Nasdaq Capital Market.

(g) "**Expiration Date**" means the date 24 months after the Issuance Date or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded (a "**Holiday**"), the next date that is not a Holiday.

(h) "**Fundamental Transaction**" means that, after the Issuance Date, the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into another Person, (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination immediately prior to such stock purchase or business combination), (v) reorganize, recapitalize or reclassify its Common Stock, or (vi) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act), other than the Holder and its Affiliates or any Related Party thereof, is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock (excluding any debt securities convertible into equity) normally entitled to vote in the election of directors ("Voting Stock") of the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock held by a Parent Entity) or 50% of the aggregate economic interests in the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets).

(i) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(j) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(k) "**Principal Market**" means the Nasdaq Capital Market; provided, however, that in the event that the Company's Common Stock is ever listed or traded on the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the NYSE Amex, or the OTC Bulletin Board (it being understood that as used herein "OTC Bulletin Board" shall also mean any successor or comparable market quotation system or exchange to the OTC Bulletin Board such as the OTCQB operated by the OTC Markets Group, Inc.), then the "Principal Market" shall mean such other market or exchange on which the Company's Common Stock is then listed or traded.

(l) "**Related Party**" means, with respect to any specified Person, such Person's affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's affiliates.

(m) "**Stock Purchase Agreement**" means that certain Stock Purchase Agreement, dated May 18, 2016, by and between the Company and the Holder.

(n) "**Successor Entity**" means the Person formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been entered into.

(o) "**Three Year Warrant**" means that certain Three Year Warrant to purchase shares of Common Stock (Warrant No. 2016-2), dated the Issuance Date, by and between the Company and the Holder.

(p) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded including any day on which the Principal Market is open for trading for a period of time less than the customary time.

17. INVESTOR RIGHTS AGREEMENT. This Warrant and the Warrant Shares issuable upon exercise hereof shall be subject to the terms and conditions of that certain Investor Rights Agreement, dated as of the date hereof and the Holder shall be entitled to all of the rights and subject to all of the obligations under such Investor Rights Agreement. The Warrant Shares shall be deemed "Registrable Securities" as defined in such Investor Rights Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

AQUA METALS, INC.

By: /s/ Stephen R. Clarke
Stephen R. Clarke
President and Chief Executive Officer

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK

AQUA METALS, INC.

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (" **Warrant Shares**") of Aqua Metals, Inc., a Delaware corporation (the "**Company**"), evidenced by the attached Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Exercise Price. The Holder intends that payment of the Exercise Price shall be made as (check one):

- Cash Exercise under Section 1(a)(i).
- Cashless Exercise under Section 1(a)(ii).

2. Cash Exercise. If the Holder has elected a Cash Exercise, the Holder shall pay the sum of $_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

4. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will be in compliance with the provisions of Section 1(c) of this Warrant to which this notice relates.

Date: _____ __, _____

Name of Registered Holder	Name of Signatory

By: _____
Name:
Title:

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice.

AQUA METALS, INC.

By: _____

Name:
Title:

NEITHER THIS WARRANT, NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT (COLLECTIVELY, THE "SECURITIES"), HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. THIS WARRANT IS SUBJECT TO THE TRANSFER RESTRICTIONS SET FORTH HEREIN.

AQUA METALS, INC.

Warrant to Purchase Common Stock

Warrant No.: 2016-2

Date of Issuance: May 24, 2016 ("**Issuance Date**")

Aqua Metals, Inc., a Delaware corporation (the "**Company**"), certifies that, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Interstate Emerging Investments, LLC, a Delaware limited liability company, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time on or after November 23, 2016 (the "**Exercisability Date**"), but not after 6:30 p.m., New York Time, on the Expiration Date (as defined below), 1,605,131 fully paid and nonassessable shares of Common Stock (as defined below) (the "**Warrant Shares**"). The number of Warrant Shares purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as described herein. Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 17.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(c)), this Warrant may be exercised by the Holder on any day on or after the Exercisability Date, in whole or in part (but not as to fractional shares), by delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. The Holder may pay the Exercise Price in one of the following manners:

(i) Cash Exercise. The Holder may make payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash via wire transfer of immediately available funds (a "**Cash Exercise**").

(ii) Cashless Exercise. If an Exercise Notice is delivered at a time when a registration statement permitting the Holder to resell the Warrant Shares is not then effective or the prospectus forming a part thereof is not then available to the Holder for the resale of the Warrant Shares, then the Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows (a "**Cashless Exercise**"):

X = Y [(A-B)/A]

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing prices for the five Trading Days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

The term "**Exercise Delivery Documents**" as used herein refers to (i) in the case of a Cash Exercise, the Exercise Notice and accompanying payment; and (ii) in the case of a Cashless Exercise, the Exercise Notice.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a Cashless Exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Issuance Date.

The Holder shall not be required to surrender this Warrant in order to effect an exercise hereunder; provided, however, that in the event that this Warrant is exercised in full or for the remaining unexercised portion hereof, the Holder shall deliver this Warrant to the Company for cancellation within a reasonable time after such exercise. Any Warrant Shares issued hereunder shall be in uncertificated, book-entry form, as permitted by the Company's Bylaws and the Delaware General Corporation Law. On or before the third Trading Day following the date on which the Company has received all of the Exercise Delivery Documents (the "**Share Delivery Date**"), the Company shall deliver (or cause the Company's transfer agent for the Common Stock (the "**Transfer Agent**") to deliver) to the Holder a screen shot of the Transfer Agent's records or such other instrument as the Transfer Agent shall typically issue in such circumstance indicating the registration of transfer to the Holder by book-entry of the number of shares of Common Stock issuable to the Holder upon such exercise of the Warrant (an "**Ownership Notice**"). The Transfer Agent's records and any Ownership Notices shall contain the legend set forth in Section 16 (or an equivalent notation reflecting the transfer restrictions described in such legend) until such time as the legend may be removed in accordance with Section 16. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares to such Holder. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three Trading Days after any such submission and at its own expense, issue a new Warrant (in accordance with Section 7(e)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant has been and/or is being exercised. The Company shall pay any and all taxes and other expenses of the Company (including overnight delivery charges) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means the greater of (i) $9.00 per share of Common Stock or (ii) the consolidated closing bid price per share of Common Stock as of 4:00 pm Eastern Standard Time on the Issuance Date, plus $0.125; in each case subject to adjustment as provided herein.

(c) Limitations on Exercises. Notwithstanding anything contained elsewhere in this Warrant to the contrary, the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the Holder (together with the Holder's Affiliates, and any other persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of 19.99% of the outstanding shares of Common Stock (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitation, the "**Beneficial Ownership Cap**"). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock that would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, the Two Year Warrant, the Convertible Term Note any other securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 1(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and regulations promulgated thereunder. In addition, for purposes of this Section 1(c), "group" has the meaning set forth in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Notwithstanding anything contained elsewhere in this Warrant to the contrary, the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the cumulative aggregate of all exercises or conversions as a whole under this Warrant, the Two Year Warrant and the Convertible Term Note, as the case may be, together with the issuance of 702,247 shares of Common Stock pursuant to the Stock Purchase Agreement, would result in the issuance of shares of Common Stock (including, for the avoidance of doubt, any Warrant Shares issued under this Warrant, the Two Year Warrant and the Convertible Term Note) that (i) have, or will have upon issuance, voting power in excess of 19.99% of the voting power of the Common Stock outstanding immediately before the Issuance Date or (ii) represent, or will represent upon issuance, in excess of 19.99% of the number of shares of Common Stock outstanding immediately before the Issuance Date (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitations (i) and (ii), the "**Total Issuance Cap**"). The term "**Cap**" as used herein refers to either the Beneficial Ownership Cap or the Total Issuance Cap, whichever may be applicable. To the extent that any Beneficial Ownership Cap contained in this Section 1(c) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of an Exercise Notice shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable. For purposes of this Section 1(c), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the United States Securities and Exchange Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent notice by the Company or the Transfer Agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the request of the Holder, the Company shall promptly, and in any event within one Trading Day of such request, confirm to the Holder the number shares of Common Stock then outstanding.

(d) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share that the Holder would otherwise be entitled to purchase upon such exercise, the Company shall round up to the next whole share.

2 . ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES . The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Issuance Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Par Value. Notwithstanding anything to the contrary in this Warrant, in no event shall the Exercise Price be reduced below the par value of the Company's Common Stock.

3. FUNDAMENTAL TRANSACTIONS.

(a) If, at any time while this Warrant is outstanding, there occurs any Fundamental Transaction (including, without limitation, one pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, in lieu of the shares of the Common Stock (or other securities, cash assets or other property purchasable upon the exercise of the Warrant prior to such Fundamental Transaction), the same amount and kind of shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) that the Holder would have been entitled to receive upon the consummation of such Fundamental Transaction had this Warrant been exercised immediately prior to the record date for such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. Upon the occurrence of any Fundamental Transaction, the Successor Entity, if any, shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and any adjustment under this Section 3 shall be without duplication for any adjustment or distribution made under Section 2.

(b) In the event that the Company at any time grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**") the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on the exercise of this Warrant), immediately before the record date for the grant, issuance or sale of such Purchase Rights, or, if no such record date is established, the date as of which the record holders of shares of Common Stock are determined for the grant, issuance or sale of such Purchase Rights.

4. RESERVATION OF WARRANT SHARES. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of shares of Common Stock which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive or any other contingent purchase rights of Persons other than the Holder (taking into account the adjustments and restrictions in Sections 2 and 3). Such reservation shall comply with the provisions of Section 1. The Company covenants that all shares of Common Stock so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such actions as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed. If, notwithstanding the foregoing, and not in limitation thereof, at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all this Warrant (without regard to any limitations on exercise contained herein) (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this entire Warrant. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

5 . WARRANT HOLDER NOT DEEMED A STOCKHOLDER; LIMITATION ON LIABILITY . Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

6. REGISTRATION AND REISSUANCE OF WARRANTS.

(a) Registration of Warrant. The Company shall register this Warrant, upon the records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company shall also register any transfer, exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.

(b) Transfer of Warrant. This Warrant may not be offered for sale, sold, transferred or assigned without the consent of the Company, and only in accordance with applicable securities laws. Subject to applicable securities laws, if this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company together with all applicable transfer taxes, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(e)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(e)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(c) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(e)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(d) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company together with all applicable transfer taxes, for a new Warrant or Warrants (in accordance with Section 7(e)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that the Company shall not be required to issue Warrants for fractional shares of Common Stock hereunder.

(e) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant shall (i) be of like tenor with this Warrant, (ii) represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(b) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) have the same rights and conditions as this Warrant.

7. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with the information set forth in the Warrant Register. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including, in reasonable detail, a description of such action and the reason or reasons therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and; provided, that in each case, such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

8. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, 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 Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall use all reasonable efforts to take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant and (iii) shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Warrants, the Required Reserve Amount. If the Company is restricted by the Principal Market from issuing and delivering the lesser of the (i) Beneficial Ownership Cap or (ii) Total Issuance Cap, then the Company shall use its best efforts to obtain the approval of the requisite holders of the issued and outstanding voting capital stock of the Company required by the listing requirements of the Principal Market.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

10. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware.

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two Trading Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within five Trading Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Trading Days submit via facsimile the disputed determination of the Exercise Price or the disputed arithmetic calculation of the Warrant Shares to an independent, outside accountant. The Company shall cause the accountant to perform the determinations or calculations and notify the Company and the Holder of the results no later than 10 Trading Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the accountant will be borne by the Company unless the accountant determines that the Holder failed to act in good faith in its determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, in which case the expenses of the accountant will be borne by the Holder.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder may cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to seek an injunction restraining any breach.

14. SUCCESSORS AND ASSIGNS. This Warrant shall bind and inure to the benefit of and be enforceable by the Company and the Holder and their respective permitted successors and assigns.

15. LEGENDS. The Holder understands that the Warrant and the Warrant Shares issuable and deliverable upon exercise of this Warrant have not been registered pursuant to the provisions of the Securities Act, and the Warrant or Warrant Shares will bear the following restrictive legend (in addition to any legend required under applicable state securities laws):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

The Company, at its sole cost, shall remove the legend described in Section 15 (or instruct the Transfer Agent to so remove such legend) from the certificates evidencing the Warrant and Warrant Shares, as applicable, if (A) such Warrant Shares are sold pursuant to an effective registration statement under the Securities Act, (B) such Warrant or Warrant Shares, as applicable, are sold or transferred pursuant to Rule 144 (if the transferor is not an Affiliate of the Company), or (C) such Warrant or Warrant Shares, as applicable, are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable) as to such securities and without volume or manner of sale restrictions. In connection with a sale of the Warrant or Warrant Shares, as applicable, by any Holder in reliance on Rule 144, such Holder or its broker shall deliver to the Transfer Agent and the Company a customary broker representation letter providing to the transfer agent and the Company any information the Company deems reasonably necessary to determine that the sale of the Warrant or Warrant Shares, as applicable, is made in compliance with Rule 144, including, where and as may be appropriate, a certification that such Holder is not an Affiliate of the Company and regarding the length of time the Warrant or Warrant Shares, as applicable, have been held. Upon receipt of such representation letter, the Company shall promptly remove the legend refereed to in this Section 15 from the Warrant or direct its Transfer Agent to remove the legend referred to in this Section 15 from the Warrant Shares from the appropriate book-entry accounts maintained by the Transfer Agent, in each case within two (2) Business Days, and the Company shall bear all costs associated therewith. If a Holder is not an Affiliate of the Company and has held the Warrant or Warrant Shares, as applicable, for at least one year, if the book-entry account of such Warrant Shares or certificate for the Warrant still bears the legend referred to in this Section 15, the Company agrees, upon request of Purchaser, to take all steps necessary to effect the removal of the legend described in this Section 15 within two (2) Business Days from the appropriate book-entry accounts maintained by the Transfer Agent or the Warrant, and the Company shall bear all costs associated therewith, regardless of whether the request is made in connection with a sale or otherwise, so long the Holder provides to the Company any information the Company deems reasonably necessary to determine that the legend is no longer required under the Securities Act or applicable state laws, including (if there is no such registration statement), where and as may be appropriate, a certification that such Holder is not an Affiliate of the Company and regarding the length of time the Warrant or Warrant Shares, as applicable, have been held.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

(b) "**Bloomberg**" means Bloomberg LP or, if Bloomberg ceases to provide quotations for the Common Stock, such other nationally recognized quotation service as the Company shall select.

(c) "**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Dallas, Texas are authorized or required by Law to be closed for business.

(d) "**Common Stock**" means (i) the Company's shares of Common Stock, $0.001 par value per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) "**Convertible Term Note**" means that certain convertible promissory note, dated May 23, 2016, by and between the Company and the Holder, and all renewals, replacements, amendments, modifications and extensions thereof, such note issued pursuant to Section 2.1 of that certain Credit Agreement, dated May 18, 2016, by and between the Company and the Holder.

(f) "**Eligible Market**" means The New York Stock Exchange, Inc., the NYSE MKT, The Nasdaq Stock Market, the NASDAQ Global Select Market or the Nasdaq Capital Market.

(g) "**Expiration Date**" means the date 36 months after the Issuance Date or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded (a "**Holiday**"), the next date that is not a Holiday.

(h) "**Fundamental Transaction**" means that, after the Issuance Date, the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into another Person, (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination immediately prior to such stock purchase or business combination), (v) reorganize, recapitalize or reclassify its Common Stock, or (vi) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act), other than the Holder and its Affiliates or any Related Party thereof, is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock (excluding any debt securities convertible into equity) normally entitled to vote in the election of directors ("Voting Stock") of the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock held by a Parent Entity) or 50% of the aggregate economic interests in the Company (or its successor by merger, consolidation or purchase of all or substantially all of its assets).

(i) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(j) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(k) "**Principal Market**" means the Nasdaq Capital Market; provided, however, that in the event that the Company's Common Stock is ever listed or traded on the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the NYSE Amex, or the OTC Bulletin Board (it being understood that as used herein "OTC Bulletin Board" shall also mean any successor or comparable market quotation system or exchange to the OTC Bulletin Board such as the OTCQB operated by the OTC Markets Group, Inc.), then the "Principal Market" shall mean such other market or exchange on which the Company's Common Stock is then listed or traded.

(l) "**Related Party**" means, with respect to any specified Person, such Person's affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's affiliates.

(m) "**Stock Purchase Agreement**" means that certain Stock Purchase Agreement, dated May 18, 2016, by and between the Company and the Holder.

(n) "**Successor Entity**" means the Person formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been entered into.

(o) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded including any day on which the Principal Market is open for trading for a period of time less than the customary time.

(p) "**Two Year Warrant** " means that certain Two Year Warrant to purchase shares of Common Stock (Warrant No. 2016-1), dated the Issuance Date, by and between the Company and the Holder.

17. INVESTOR RIGHTS AGREEMENT. This Warrant and the Warrant Shares issuable upon exercise hereof shall be subject to the terms and conditions of that certain Investor Rights Agreement, dated as of the date hereof and the Holder shall be entitled to all of the rights and subject to all of the obligations under such Investor Rights Agreement. The Warrant Shares shall be deemed "Registrable Securities" as defined in such Investor Rights Agreement. Notwithstanding any other provision of this Agreement, this Warrant shall not be exercisable at any time during which Holder is in material violation of Section 5.1 of the Investor Rights Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

AQUA METALS, INC.

By: /s/ Stephen R. Clarke
Stephen R. Clarke
President and Chief Executive Officer

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK

AQUA METALS, INC.

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (" **Warrant Shares**") of Aqua Metals, Inc., a Delaware corporation (the "**Company**"), evidenced by the attached Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Exercise Price. The Holder intends that payment of the Exercise Price shall be made as (check one):

- Cash Exercise under Section 1(a)(i).
- Cashless Exercise under Section 1(a)(ii).

2. Cash Exercise. If the Holder has elected a Cash Exercise, the Holder shall pay the sum of $_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

4. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will be in compliance with the provisions of Section 1(c) of this Warrant to which this notice relates.

Date: _____ __, _____

Name of Registered Holder	Name of Signatory

By: _____
Name:
Title:

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice.

AQUA METALS, INC.

By: _____

Name:
Title:

Exhibit 10.1

STOCK PURCHASE AGREEMENT

by and between

AQUA METALS, INC.

and

INTERSTATE EMERGING INVESTMENTS, LLC

dated as of

May 18, 2016

TABLE OF CONTENTS

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "**Agreement**"), dated as of May 18, 2016, is entered into by and between Aqua Metals, Inc., a Delaware corporation (the "**Company**"), and Interstate Emerging Investments, LLC, a Delaware limited liability company ("**Purchaser**").

RECITALS

WHEREAS, the Company has authorized the issuance and sale by the Company to the Purchaser of up to $5,000,000 in shares of common stock of the Company, par value $0.001 per share (the "**Common Stock**"); and

WHEREAS, the Company desires to issue and sell to Purchaser, and Purchaser desires to purchase from the Company, shares of the Common Stock, on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I
Definitions

The following terms have the meanings specified or referred to in this **Article I**:

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise .

"**Agreement**" has the meaning set forth in the preamble.

"**Audited Financial Statements**" has the meaning set forth in Section 3.10.

"**Balance Sheet**" has the meaning set forth in Section 3.10.

"**Balance Sheet Date**" has the meaning set forth in Section 3.10.

"**Benefit Plan**" has the meaning set forth in Section 3.21(a).

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Dallas, Texas are authorized or required by Law to be closed for business.

"**Bylaws**" means the Amended and Restated Bylaws of the Company, as may be amended, restated or modified from time to time.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"**Certificate of Incorporation**" means that certain First Amended and Restated Certificate of Incorporation of the Company filed with the Delaware Secretary of State on October 1, 2014, as may be amended, restated or modified from time to time.

"**Closing**" has the meaning set forth in Section 2.03.

"**Closing Date**" has the meaning set forth in Section 2.03.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Stock**" has the meaning set forth in the recitals.

"**Company**" has the meaning set forth in the preamble.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, loans, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"**Credit Agreement**" means that certain Credit Agreement, dated as of the date hereof, by and between Purchaser and the Company.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by the Company and Purchaser concurrently with the execution and delivery of this Agreement.

"**Dollars**" or "**$**" means the lawful currency of the United States.

"**Employment Laws**" has the meaning set forth in Section 3.22(d).

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**Environmental Claim**" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

"**Environmental Notice**" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate** " means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Financial Statements**" has the meaning set forth in Section 3.10.

"**FINRA**" means the Financial Industry Regulatory Authority, Inc..

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Licenses**" has the meaning set forth in Section 3.19.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"**Insurance Policies**" has the meaning set forth in Section 3.17.

"**Intellectual Property Rights**" has the meaning set forth in Section 3.16.

"**Interim Balance Sheet**" has the meaning set forth in Section 3.10.

"**Interim Balance Sheet Date**" has the meaning set forth in Section 3.10.

"**Interim Financial Statements**" has the meaning set forth in Section 3.10.

"**Investor Rights Agreement**" means the Investor Rights Agreement, dated as of the Closing Date, by and among the Company and the Purchaser, substantially in the form attached hereto as Exhibit A.

"**Knowledge of the Company**" or "**the Company's Knowledge**" or any other similar knowledge qualification, means the actual knowledge of any director or officer of the Company.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Liabilities**" has the meaning set forth in Section 3.12.

"**Loan Documents**" means the Note, the Credit Agreement and the Security Documents (as defined in the Credit Agreement).

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided*, that "**Losses**" shall not include any punitive or exemplary damages.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company.

"**Money Laundering Laws**" has the meaning set forth in Section 3.31.

"**Multiemployer Plan**" has the meaning set forth in Section 3.21(c).

"**NASDAQ**" means the Nasdaq Capital Market.

"**National Securities Purchase Agreement**" means that certain agreement between the Company and the investors named therein pursuant to which the Company will sell approximately $5,000,000 of shares of its Common Stock, at $7.12 per share, through National Securities Corporation as placement agent.

"**Note**" means the convertible promissory note delivered by the Company to Purchaser pursuant to the Credit Agreement.

"**OFAC**" has the meaning set forth in Section 3.32.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in Section 3.15(a).

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Purchase Price**" has the meaning set forth in Section 2.01.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Indemnitees**" has the meaning set forth in Section 7.02.

"**Qualified Benefit Plan**" has the meaning set forth in Section 3.21(c).

"**Real Property**" means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

"**Release**" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**SEC**" means the Securities and Exchange Commission.

"**SEC Documents**" means the Company's reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act or the Securities Act and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Shares**" has the meaning set forth in Section 2.01.

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership, joint venture, or other business or corporate entity, enterprise or organization which is directly or indirectly (through one or more intermediaries) controlled by or owned fifty 50% or more by such Person.

"**Supply Agreement**" means that certain Supply Agreement, dated as of the date hereof, by and between Purchaser and the Company.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Transaction Documents**" means this Agreement, the Investor Rights Agreement, the Supply Agreement, the Warrants, the Loan Documents and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the consummation of the transactions contemplated hereby and thereby, as may be amended from time to time.

"**Union**" means any labor union, organization, association, work council, or other group representing employees with respect to their employment.

"**WARN**" has the meaning set forth in Section 3.22(i).

"**Warrants**" means warrants to purchase additional shares of Common Stock, on the terms and subject to the conditions set forth in the Credit Agreement.

ARTICLE II
Purchase and Sale

Section 2.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing, the Company shall issue and sell to Purchaser, and Purchaser shall purchase from the Company, an aggregate of 702,247 shares of Common Stock (the "**Shares**"), for an aggregate purchase price of $4,999,998.64 (the "**Purchase Price**").

Section 2.02 Transactions Effected at the Closing.

(a) At the Closing, Purchaser shall deliver to the Company:

(i) the Purchase Price by wire transfer of immediately available funds to an account of the Company designated in writing by the Company to Purchaser at least two (2) Business Days prior to the Closing; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by Purchaser at or prior to the Closing pursuant to Section 5.03 of this Agreement.

(b) At the Closing, the Company shall deliver to Purchaser:

(i) evidence of the Shares credited to book-entry accounts maintained by the transfer agent of the Company (the "**Transfer Agent**"), bearing the legend or restrictive notation set forth in Section 4.05 of this Agreement, free and clear of all Encumbrances, other than transfer restrictions set forth herein, under the Bylaws and applicable federal and state securities laws; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by the Company at or prior to the Closing pursuant to Section 5.02 of this Agreement.

Section 2.03 **Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the "**Closing**") to be held at 9:00 a.m., Central time, at the offices of Thompson & Knight LLP, 1722 Routh St., Suite 1500, Dallas, Texas 75201, or at such other time or on such other date or at such other place or by such other method as the Company and Purchaser may mutually agree upon orally or in writing (the day on which the Closing takes place, the "**Closing Date**").

Section 2.04 **Use of Proceeds.** The proceeds from the issuance of the Shares and the Note shall be used by the Company to purchase four kettles for use in lead recycling, for start up and expansion costs for the Company's Reno, Nevada lead recycling plant, and to provide working capital for the Company's operations.

ARTICLE III
Representations and Warranties of the Company

Except as set forth in the Disclosure Schedules, the Company represents and warrants to Purchaser that the statements contained in this Article III are true and correct as of the date hereof. The Disclosure Schedules shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Article III, and the disclosures in any section or subsection of the Disclosure Schedules shall qualify other sections and subsections in this Article III only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

Section 3.01 Organization, Qualification and Authority of the Company. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to (a) enter into this Agreement and the other Transaction Documents to which the Company is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby and (b) own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.01 of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. The execution and delivery by the Company of this Agreement and any other Transaction Document to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. When each other Transaction Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

Section 3.02 Capitalization.

(a) As set forth on Section 3.02(a) of the Disclosure Schedules, the authorized capital stock of the Company immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents will consist of 50,000,000 shares of Common Stock, of which (A) 15,559,022 shares will be issued and outstanding, (B) 20,894,979 shares will be issued and outstanding on a fully-diluted, as converted and as exercised basis, and (C) 4,633,710 shares will be reserved for issuance upon exercise of outstanding stock options and warrants.

(b) As of immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, (i) all of the issued and outstanding shares of Common Stock will have been duly authorized, validly issued, and will be fully paid and non-assessable, (ii) all of the issued and outstanding shares of Common Stock will have been issued in compliance with all applicable federal and state securities Laws, (iii) none of the issued and outstanding shares of Common Stock will have been issued in violation of any agreement, arrangement or commitment to which the Company or any of its Affiliates is a party or subject to or in violation of any preemptive or similar rights of any Person granted by the Company, and (iv) all of the Shares will have the rights, preferences, powers, restrictions and limitations set forth in the Certificate of Incorporation and under the Delaware General Corporation Law.

(c) Section 3.02(c) of the Disclosure Schedules also sets forth, as of immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, all outstanding or authorized (i) stock options and (ii) any warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating the Company to issue or sell any shares of capital stock of, or any other interest in, the Company, in each case, including the number and kind of securities reserved for issuance on exercise or conversion of any such securities or other rights, the exercise or conversion price of any such securities or other rights and any applicable vesting schedule for any such securities or other rights. Except as set forth on Section 3.02(c) of the Disclosure Schedules, the Company does not have outstanding, authorized, or in effect any stock appreciation, phantom stock, profit participation or similar rights. Except as set forth on Section 3.02(c) of the Disclosure Schedules, there are no voting trusts, stockholder agreements, proxies or other agreements, understandings or obligations in effect with respect to the voting, transfer or sale (including any rights of first refusal, rights of first offer or drag-along rights), issuance (including any pre-emptive or anti-dilution rights), redemption or repurchase (including any put or call or buy-sell rights), or registration (including any related lock-up or market standoff agreements) of any shares of capital stock or other securities of the Company.

(d) The Company's currently outstanding shares of Common Stock are quoted on the NASDAQ Capital Market, and the Company has not received any notice of delisting.[1]

Section 3.03 Subsidiaries. Section 3.03 of the Disclosure Schedules contains a complete list of all of the Subsidiaries of the Company. Each such Subsidiary is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified as a foreign entity in all jurisdictions in which it is required to be so qualified. Except as set forth on Section 3.03 of the Disclosure Schedules, the Company does not presently have any other Subsidiaries or, directly or indirectly, own, control or have any interest in any shares or other ownership interest in any other Person. As to any Subsidiaries of the Company listed in Section 3.03 of the Disclosure Schedule, the Company owns, directly or indirectly, the equity interest in those Subsidiaries that are indicated in Section 3.03 of the Disclosure Schedule.

[1] NTD: To discuss.

Section 3.04 **SEC Documents.** The Company has timely filed with the SEC all SEC Documents. The SEC Documents, including any audited or unaudited financial statements and any notes thereto or schedules included therein, at the time filed (in the case of registration statements, solely on the dates of effectiveness) (except to the extent corrected by a subsequently filed SEC Document filed prior to the date hereof), (i) did not 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 light of the circumstances under which they were made, not misleading, (ii) on their face complied as to form in all material respects with applicable requirements of the Exchange Act and the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iii) were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and (iv) fairly present (subject in the case of unaudited statements to normal, recurring and year-end audit adjustments) in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended.

Section 3.05 **No Defaults; Violations.** No material default exists in the due performance and observance of any term, covenant or condition of any material license, contract, indenture, mortgage, deed of trust, note, loan or credit agreement, or any other material agreement or instrument evidencing an obligation for borrowed money, or any other material agreement or instrument to which the Company is a party or by which the Company may be bound or to which any of the properties or assets of the Company is subject. The Company is not in violation of any term or provision of its Certificate of Incorporation or Bylaws, or in violation of any franchise, license, permit, applicable law, rule, regulation, judgment or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its properties or businesses.

Section 3.06 **Consents.** All consents, authorizations, approvals and orders required in connection with the execution, delivery, and performance by the Company and the Subsidiaries of each of the Transaction Documents and all ancillary documents to which it is a party, the consummation by the Company and the Subsidiaries of the transactions herein and therein contemplated and the compliance by the Company and the Subsidiaries with the terms hereof and thereof have been obtained. No consent, authorization or order of, and no filing with, any court, government agency or other body is required for the valid issuance, sale and delivery of the securities and the consummation of the transactions and agreements contemplated by this Agreement and as contemplated by the disclosures the SEC Documents.

Section 3.07 **No Conflicts, etc.** The execution, delivery, and performance by the Company of this Agreement and all Transaction Documents, the consummation by the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms hereof and thereof do not and will not, with or without the giving of notice or the lapse of time or both: (i) result in a violation or breach of, or conflict with any of the terms and provisions of, or constitute a default under, or result in the creation, modification, termination or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any agreement or instrument to which the Company is a party that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (ii) conflict with or result in any violation or breach of the provisions of the Certificate of Incorporation or Bylaws; or (iii) conflict with or result in the Company's violation or breach of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its properties or business constituted as of the date hereof that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.08 **Disclosure Controls.** The Company and its Subsidiaries maintain a system of "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure to be made; such disclosure controls and procedures are effective.

Section 3.09 **Accounting Controls.** The Company and its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, 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 GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no material weaknesses in the internal controls over financial reporting of the Company. The Company's auditors and the Audit Committee of the board of directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the ability of the Company to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

Section 3.10 Financial Statements. Complete copies of the audited consolidated financial statements, including the notes thereto and supporting schedules, if any, of the Company and its Subsidiaries consisting of the balance sheet of the Company as at December 31 in each of the years 2014 and 2015 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at March 31, 2016 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Purchaser. The Financial Statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated and the supporting schedules, if any, present fairly the information required to be stated therein. The audited balance sheet of the Company as of December 31, 2015 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of March 31, 2016 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the SEC Documents fairly presents the information called for in all material respects and has been prepared in accordance with the SEC's rules and guidelines applicable thereto.

Section 3.11 Independent Accountants. Armanino LLP, who have certified certain consolidated financial statements of the Company and its Subsidiaries, are independent public accountants with respect to the Company and its Subsidiaries within the applicable rules and regulations adopted by the SEC and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

Section 3.12 Undisclosed Liabilities. Except as set forth on Section 3.12 of the Disclosure Schedule, the Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those that are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date, and (b) those that have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.13 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company or any Subsidiary, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the Certificate of Incorporation, the Bylaws or other organizational documents of the Company;

(c) split, combination or reclassification of any shares of its capital stock;

(d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(h) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation, discharge or payment of any material debts, liens or entitlements;

(i) transfer, assignment or grant of any license or sublicense of any Intellectual Property Rights;

(j) any capital investment in, or any loan to, any other Person;

(k) acceleration, termination, material modification or amendment to or cancellation of any material contract to which the Company is a party or by which it is bound;

(l) any material capital expenditures;

(m) imposition of any Encumbrance upon any of the Company properties, capital stock or assets, tangible or intangible;

(n) any mass layoff of employees or adoption, modification or termination of any: (i) material employment, severance, retention, change in control, or other Contract with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining, memorandum of understanding, or other Contract with a Union, in each case whether written or oral;

(o) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders, directors, officers and employees;

(p) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(q) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(r) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof; or

(s) any contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.14 Disclosure of Agreements. The agreements and documents described in the SEC Documents conform to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the rules and regulations to be described therein or to be filed with the SEC, that have not been so described or filed. Each agreement or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the SEC Documents, or (ii) is material to the Company's business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company's knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal or state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the Company's Knowledge, any other party is in default thereunder and, to the Company's Knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder. To the Company's Knowledge, performance by the Company of the material provisions of such agreements or instruments will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its assets or businesses, including, without limitation, those relating to environmental laws and regulations.

Section 3.15 Title to Assets; Real Property.

(a) The Company has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Audited Financial Statements or acquired after the Interim Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) those items set forth in Section 3.15(a) of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Interim Balance Sheet;

(iii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company;

(v) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company; or

(vi) other imperfections of title or Encumbrances, if any, that individually or in the aggregate, have not had, and would not have, a Material Adverse Effect.

Section 3.16 Intellectual Property. The Company owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct its business as now conducted and as presently proposed to be conducted. To the Knowledge of the Company, the Company has not infringed, nor conflicted with, the Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the Knowledge of the Company, being threatened, against the Company or any Subsidiary regarding their Intellectual Property Rights. The Company is not aware of any facts or circumstances that might reasonably give rise to any of the foregoing infringements or claims, actions or proceedings.

Section 3.17 Insurance. The Company is covered by valid, outstanding and enforceable policies or binders of fire, liability, product liability, umbrella liability, pollution and other environmental, real and personal property, workers' compensation, vehicular, directors and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company or its Affiliates and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**"), and true and complete copies of such Insurance Policies have been made available to Purchaser. Such Insurance Policies are in full force and effect and none of the Insurance Policies will lapse or terminate following the consummation of the transactions contemplated by this Agreement. Neither the Company nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound, except where such noncompliance would not result in a Material Adverse Effect. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

Section 3.18 Legal Proceedings; Governmental Orders.

(a) There are no material Actions pending or, to the Company's Knowledge, threatened against, or involving the Company or any of its Subsidiaries, or, to the Company's Knowledge, any executive officer or director of the Company, or by the Company or any of its Subsidiaries affecting any of its properties or assets (or by or against the Company or any Affiliate thereof and relating to the Company).

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its Subsidiaries or any of their properties or assets.

Section 3.19 Possession of Licenses and Permits. The Company and each of its Subsidiaries (A) possesses the licenses, permits, certificates, authorizations, consents and approvals (collectively, "**Governmental Licenses**") issued by the appropriate Governmental Authorities necessary to conduct its business as currently conducted as described in the SEC Documents, and (B) has obtained all necessary Governmental Licenses from other persons necessary to conduct its business, except, in each case of clauses (A) and (B), (i) as described in the SEC Documents or (ii) to the extent that any failure to possess any Governmental Licenses, provide any notice, make any filing, or obtain any Governmental Licenses would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; none of the Company and subsidiaries is in violation of, or in default under, any Governmental License, as except as would not reasonably be expected to have a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor the Subsidiary has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

Section 3.20 Environmental Laws. Except as described in the SEC Documents, (A) neither the Company nor any subsidiary is in violation of any Environmental Laws, except for those violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (B) each of the Company and its subsidiaries has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance in all material respects with their requirements, (C) there are no pending or, to the Company's Knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any subsidiary, and (D) to the Company's Knowledge, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an investigation, action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any subsidiary relating to Hazardous Materials or any Environmental Laws.

Section 3.21 Employee Benefit Matters.

(a) Section 3.21(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company, or under which the Company or any of its ERISA Affiliates has or may have any Liability, or with respect to which Purchaser or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 3.21(a) of the Disclosure Schedules, each, a "**Benefit Plan**").

(b) With respect to each Benefit Plan, the Company has made available to Purchaser accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; and (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the most recently filed Forms 5500, with schedules and financial statements attached.

(c) Each Benefit Plan and related trust has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code and any applicable state or local Laws).

(d) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; or (iv) engaged in any transaction that would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(e) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan; (ii) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); and (iii) no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA.

(f) Other than as required under Section 601 et. seq. of ERISA or other applicable Law, no Benefit Plan or other arrangement provides post-termination or retiree welfare benefits to any individual for any reason.

(g) There is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(h) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(i) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (iv) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (v) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code.

Section 3.22 Employment Matters.

(a) . The Company is not involved in any strike, labor dispute, work stoppage, work slowdown, lockout, or similar labor matter or, to the Knowledge of the Company, is any such dispute, slowdown, lockout or other matter threatened. To the Knowledge of the Company, none of the Company's employees is a member of a union, works council or labor organization. There are no labor agreements, collective bargaining agreements, or other labor Contracts applicable to any employees of the Company or by which the Company is bound, and no discussions or negotiations have occurred with respect thereto by the Company any Union within the prior four years.

(b) No employees of the Company are represented by any Union and no Union claims to represent a majority of any employees of the Company in a bargaining unit of any of the Company.

(c) There are no current or, to the Company's Knowledge, threatened representational campaigns or other organizing activities by any Union seeking to become the collective bargaining representative of any employees of the Company, and there is no Union or labor organization representation question or certification petition against the Company pending or, to the Company's Knowledge, threatened before the National Labor Relations Board or any similar Governmental Authority.

(d) The Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, terms and conditions of employment, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, worker classification as exempt or non-exempt and as employee rather than independent contractor, employment-related immigration and authorization to work in the United States, wages, hours, employee benefits, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, occupational health and safety, notice of plant closings or mass layoffs, affirmative action, employee waivers of liability, workers' compensation, leaves of absence and unemployment insurance (collectively "**Employment Laws**").

(e) All individuals characterized and treated by the Company as independent contractors or consultants are properly treated and classified as independent contractors under all applicable Employment Laws. All employees classified as exempt under applicable Employment Laws, including the Fair Labor Standards Act and state and local wage and hour Laws, are properly classified in all material respects.

(f) There are no pending or, to the Company's Knowledge, threatened investigations, charges, complaints, Actions, suits or judicial, administrative, or arbitral proceedings of any kind and in any forum by or on behalf of any employee or former employee of the Company, applicant for employment, Person claiming to be an employee, or any classes of the foregoing, against the Company alleging a violation of, or compliance with, any express or implied contract of employment or any Employment Laws.

(g) The Company is not currently engaged in, and has not engaged in, any unfair labor practices regarding any employees of the Company and there is no pending or, to the Company's Knowledge, threatened proceeding involving any unfair labor practices regarding any employees of the Company before the National Labor Relations Board or any similar Governmental Authority, nor are there any actual or threatened grievances or arbitration proceedings arising out of or under any collective bargaining agreement pending against the Company.

(h) The Company has timely paid or properly accrued for all wages, salaries, commissions, bonuses, severance pay, vacation pay and other paid time off, benefits, and any other compensation or remuneration owed to employees of the Company for or on account of employment.

(i) Within the previous four years, the Company has not experienced a "plant closing" or "mass layoff" as defined by the Worker Adjustment and Retraining Notification Act (" **WARN**") or been required to provide any notice, pay, or benefits to employees or former employees under any other applicable Law governing mass layoffs and, with respect to any such "plant closing" or "mass layoff," the Company has complied with the notice requirements of WARN and applicable Law.

(j) No severance payment, stay-on or incentive payment, change-in-control payment, vacation or other paid leave payment, or similar payment or obligation will be owed by the Company to any of its directors, officers, employees, agents, contractors, consultants, or any other Person upon consummation of, or as a result of, the transactions contemplated by this Agreement, nor will any such director, officer, employee, agent, contractor, consultant, or any other Person be entitled to any such payments a result of the transactions contemplated by this Agreement in the event of the termination of his or her employment or relationship.

Section 3.23 No Registration Required. Assuming the accuracy of the representations and warranties of Purchaser contained in this Agreement, the sale and issuance of the shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the Company's knowledge, any authorized Representative acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

Section 3.24 No Integration. Neither the Company nor any of its Affiliates has, directly or indirectly through any agent, made any offers or sales of any security of the Company or solicited any offers to buy any security that is or will be integrated with the sale of the Shares in a manner that would require such registration under the Securities Act.

Section 3.25 **No Side Agreements.** There are no agreements by the Company, on the one hand, and Purchaser or any of their Affiliates, on the other hand, with respect to the transactions contemplated hereby other than the Transaction Documents, nor promises or inducements for future transactions between or among any of such parties.

Section 3.26 **NASDAQ Listing of Shares.** As of the Closing Date, the Shares will be approved for listing, subject to official notice of issuance, on the NASDAQ Capital Market.

Section 3.27 **Taxes.** Except as set forth in Section 3.27 of the Disclosure Schedules:

(a) The Company has timely filed all Tax Returns that it was required to file. All such Tax Returns were complete and correct in all respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been timely paid.

(b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, stockholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(d) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(e) The Company is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

Section 3.28 **Books and Records.** The minute books and stock record books of the Company, all of which have been made available to Purchaser, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain, in all material respects, accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of the Company, and no meeting, or action taken by written consent, of any such stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books.

Section 3.29 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of the Company.

Section 3.30 Related Party Transactions. Except as disclosed in the SEC Documents, there are no business relationships or related party transactions involving the Company or any other person required to be described in the SEC Documents that have not been described as required.

Section 3.31 Money Laundering Laws. The Company has not, and, to the Company's Knowledge, none of the officers, directors, employees or agents purporting to act on behalf of the Company or one of its Subsidiaries, as applicable, has, made any payment of funds of the Company or one of its Subsidiaries or received or retained any funds in violation of any law, rule or regulation relating to the "know your customer" and anti-money laundering laws of any jurisdiction (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any Governmental Authority involving the Company or one of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the Company's Knowledge, threatened.

Section 3.32 OFAC. The Company has not, and, to the Company's Knowledge, none of the respective directors, officers, agents or employees purporting to act on behalf of the Company or one of its Subsidiaries, as applicable, is currently the target of or reasonably likely to become the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company and its Subsidiaries will not directly or indirectly use the proceeds of the sale of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently the target of any U.S. sanctions administered by OFAC.

Section 3.33 Investment Company Act. The Company is not, nor upon the sale of the Shares as contemplated herein and the application of the net proceeds therefrom, will the Company be, an "investment company" or an entity "controlled" by an "investment company" (as such terms are defined in the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder).

Section 3.34 Foreign Corrupt Practices Act. Neither the Company nor any of the directors, employees or officers of the Company or, to the Company's Knowledge, any other person acting on behalf of the Company has, directly or indirectly, given or agreed to give any money, gift or similar benefit (other than legal price concessions to customers in the ordinary course of business) to any customer, supplier, employee or agent of a customer or supplier, or official or employee of any governmental agency or instrumentality of any government (domestic or foreign) or any political party or candidate for office (domestic or foreign) or any political party or candidate for office (domestic or foreign) or other person who was, is, or may be in a position to help or hinder the business of the Company (or assist it in connection with any actual or proposed transaction) that (i) might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past, might have had a Material Adverse Effect as reflected in any of the Financial Statements or (iii) if not continued in the future, might have a Material Adverse Effect. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the Foreign Corrupt Practices Act of 1977, as amended.

Section 3.35 Officer's Certificate. Any certificate pursuant to this Agreement signed by any duly authorized officer of the Company and delivered to Purchaser shall be deemed a representation and warranty by the Company to Purchaser as to the matters covered thereby).

ARTICLE IV
Representations and Warranties of Purchaser

Purchaser represents and warrants to the Company that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Purchaser. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Purchaser has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Purchaser is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and any other Transaction Document to which Purchaser is a party, the performance by Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by the Company) this Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. When each other Transaction Document to which Purchaser is or will be a party has been duly executed and delivered by Purchaser (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Purchaser enforceable against it in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of Purchaser; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Purchaser; or (c) require the consent, notice or other action by any Person under any Contract to which Purchaser is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.03 Investment Purpose. Purchaser is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Purchaser acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended, or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Purchaser.

Section 4.05 Legend. Purchaser understands that the book entry evidencing the Shares will bear the following legend: "THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS."

Section 4.06 **Accredited Investor Status**. Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D, as promulgated under the Securities Act.

Section 4.07 **SEC Documents.** Purchaser acknowledges and agrees that the Company has provided or made available to Purchaser (through EDGAR, the Company's website or otherwise) all SEC Documents, as well as all press releases or investor presentations issued by the Company through the date of this Agreement that are included in a filing by the Company on Form 8-K or clearly posted on the Company's website.

ARTICLE V
Conditions to closing

Section 5.01 **Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing Date, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) This Agreement and each of the other Transaction Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to the parties.

(c) The contemporaneous closing of the transactions contemplated by the National Securities Purchase Agreement.

Section 5.02 **Conditions to Obligations of Purchaser.** The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Purchaser's waiver, at or prior to the Closing, of each of the following conditions:

(a) The Company shall have obtained all governmental, regulatory or third party consents and approvals necessary for the sale of the Shares.

(b) Purchaser shall have received a certificate duly executed by the President and Chief Executive Officer of the Company, dated as of the Closing, certifying:

(i) all representations and warranties of the Company shall be true and correct in all material respects as of the date hereof and at and as of the Closing Date, with the same force and effect as though made on and as of the Closing Date; and

(ii) the Company shall have performed all obligations and agreements and complied with all covenants and conditions contained in this Agreement to be performed or complied with by it prior to the Closing Date.

(c) Purchaser shall have received a certificate duly executed by the secretary or an assistant secretary (or equivalent officer) of the Company, dated as of the Closing, certifying:

(i) that attached thereto are true and complete copies of all resolutions and other consents adopted by the board of directors and stockholders of the Company authorizing and approving the execution, delivery, filing and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions and consents are in full force and effect as of the Closing and are all the resolutions and consents adopted in connection with the transactions contemplated hereby and thereby;

(ii) that attached thereto are true and complete copies of the Certificate of Incorporation and Bylaws of the Company and that such organizational documents are in full force and effect as of the Closing; and

(iii) the names and signatures of the officers of the Company authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(d) The Company shall have delivered to Purchaser (i) a good standing certificate (or its equivalent) for the Company and each of the Subsidiaries from the secretary of state of the State of Delaware and (ii) a foreign qualification certificate (or its equivalent) for the Company and each of the Subsidiaries from the secretary of state or similar Governmental Authority of each jurisdiction in which the Company has qualified, or is required to qualify, to do business as a foreign corporation.

(e) The Company shall have delivered, or caused to be delivered, to Purchaser each of the following, each in form and substance satisfactory to Purchaser:

(i) evidence of the Shares credited to book-entry accounts maintained by the Transfer Agent, bearing the legend or restrictive notation set forth in Section 4.05 of this Agreement, free and clear of all Encumbrances, other than transfer restrictions under the Transaction Documents, the Bylaws and applicable federal and state securities laws;

(ii) an opinion of legal counsel to the Company, dated as of the Closing Date, satisfactory to Purchaser; and

(iii) such other documents or instruments as Purchaser reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(f) The Company shall have fully complied with, or obtained appropriate consents or waivers with respect to, its obligations under each of the agreements or other documents identified on Section 3.02(c) of the Disclosure Schedules, including with respect to any outstanding rights of first refusal, rights of first offer, pre-emptive rights or anti-dilution rights or redemption or repurchase rights.

(g) The NASDAQ shall have authorized, upon official notice of issuance, the listing of the Shares.

(h) No notice of delisting from the NASDAQ shall have been received by the Company with respect to the Shares.

(i) The Shares shall not have been suspended by the SEC or the NASDAQ from trading on the NASDAQ nor shall suspension by the SEC or the NASDAQ have been threatened in writing by the SEC or the NASDAQ.

Section 5.03 Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) The Company shall have received a certificate duly executed by an officer of Purchaser, dated as of the Closing, certifying:

(i) all representations and warranties of Purchaser shall be true and correct in all material respects as of the date hereof and at and as of the Closing Date, with the same force and effect as though made on and as of the Closing Date; and

(ii) Purchaser shall have performed all obligations and agreements and complied with all covenants and conditions contained in this Agreement to be performed or complied with by it prior to the Closing Date.

(b) The Company shall have received a certificate duly executed by the secretary or an assistant secretary (or equivalent officer) of Purchaser, dated as of the Closing, certifying:

(i) the names and signatures of the officers of Purchaser authorized to sign this Agreement, the other Transaction Documents and the other documents to be delivered hereunder and thereunder.

(c) Purchaser shall have delivered to the Company cash in an amount equal to the Purchase Price by wire transfer in immediately available funds, to an account or accounts designated in writing by the Company to Purchaser.

ARTICLE VI
Covenants

Section 6.01 Appointment of Director. Following the Closing and before its next annual meeting of stockholders, the Company shall appoint a new independent director to its board of directors and audit committee in order to regain compliance with NASDAQ Listing Rule 5605(b)(1) and NASDAQ Listing Rule 5605(c)(2).

Section 6.02 Taking of Necessary Action. Each of the parties hereto shall use its commercially reasonable efforts promptly to take or cause to be taken all action and promptly to do or cause to be done all things necessary, proper or advisable under applicable Law and regulations to consummate and make effective the transactions contemplated by this Agreement. Without limiting the foregoing, the Company and Purchaser shall each use its commercially reasonable efforts to make all filings and obtain all consents of Governmental Authorities that may be necessary or, in the reasonable opinion of the other parties, as the case may be, advisable for the consummation of the transactions contemplated by the Transaction Documents. The Company shall promptly and accurately respond, and shall use its commercially reasonable efforts to cause its transfer agent to respond, to reasonable requests for information (which is otherwise not publicly available) made by Purchaser or its auditors relating to the actual holdings of Purchaser or its accounts; provided, that the Company shall not be obligated to provide any such information that could reasonably result in a violation of applicable Law or conflict with the Company's insider trading policy or a confidentiality obligation of the Company. The Company shall use its commercially reasonable efforts to cause its transfer agent to reasonably cooperate with Purchaser to ensure that the Shares are validly and effectively issued to Purchaser and that Purchaser's ownership of the Shares following the Closing is accurately reflected on the appropriate books and records of the Company's transfer agent.

Section 6.03 Supplemental Listing Application. The Company shall file prior to the Closing a supplemental listing application with the NASDAQ to list the Shares.

Section 6.04 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

ARTICLE VII
Indemnification

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations, warranties and covenants contained herein shall survive the Closing and shall remain in full force and effect until the date that is two (2) years from the Closing Date; *provided*, that the representations and warranties in Section 3.17, Section 3.20, Section 3.21, Section 3.22 and Section 3.27 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 7.02 Indemnification By Company. Subject to the other terms and conditions of this Article VII, the Company shall indemnify and defend each of Purchaser and its Affiliates and their respective Representatives (collectively, the "**Purchaser Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement.

The indemnity contained in this Section 7.02 shall not apply to amounts paid in settlement of any Loss if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing sentence, if at any time any Purchaser Indemnitee shall have requested the Company to reimburse such Purchaser Indemnitee for any Loss as contemplated by this Section 7.02, the Company agrees that it shall be liable for any settlement of Loss effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Company of the aforesaid request and (ii) the Company shall not have reimbursed the Purchaser Indemnitee in accordance with such request or disputed in good faith the Purchaser Indemnitee's entitlement to such reimbursement prior to the date of such settlement.

Section 7.03 Payments. Once a Loss is agreed to by the Company or finally adjudicated to be payable pursuant to this Article VII, the Company shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should the Company not make full payment of any such obligations within such fifteen (15)-Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Company or final, non-appealable adjudication to the date such payment has been made at a rate of 18% per annum. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

Section 7.04 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 7.05 Effect of Investigation. Neither the representations, warranties and covenants of the Company, nor the right to indemnification of any Purchaser Indemnitee making a claim under this Article VII with respect thereto, shall be affected or deemed waived by reason of any investigation made by or on behalf of a Purchaser Indemnitee (including by any of its Representatives) or by reason of the fact that a Purchaser Indemnitee or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of a Purchaser Indemnitee's waiver of any condition set forth in Section 5.02.

Section 7.06 **Exclusive Remedies.** Subject to Section 8.12, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VII. Nothing in this Section 7.06 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

ARTICLE VIII
Miscellaneous

Section 8.01 **Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.02 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.02):

If to the Company:	1010 Atlantic Avenue Alameda, California 94501 E-mail: Steve.Clarke@aquametals.com Attention: Stephen R. Clarke
with a copy to:	Greenberg Traurig, LLP 3161 Michelson Drive, Suite 1000 Irvine, California 92612 Facsimile: (949) 732-6501 E-mail: donahued@gtlaw.com Attention: Daniel K. Donahue, Esq.
If to Purchaser:	12770 Merit Drive, Suite 1000 Dallas, Texas 75251 Facsimile: (972) 455-6051 E-mail: kelvin.sellers@ibsa.com Attention: Kelvin F. Sellers
with a copy to:	Thompson & Knight LLP 1722 Routh Street, Suite 1500 Dallas, Texas 75201 Facsimile: (214) 999-1567 E-mail: wesley.williams@tklaw.com Attention: Wesley P. Williams

Section 8.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 8.04 **Removal of Legend.** The Company, at its sole cost, shall remove the legend described in Section 4.05 (or instruct its transfer agent to so remove such legend) from the certificates evidencing the Shares issued and sold to Purchaser pursuant to this Agreement if (A) such Shares are sold pursuant to an effective registration statement under the Securities Act, (B) such Shares are sold or transferred pursuant to Rule 144 (if the transferor is not an Affiliate of the Company), or (C) such Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable) as to such securities and without volume or manner of sale restrictions. In connection with a sale of the Shares by Purchaser in reliance on Rule 144, Purchaser or its broker shall deliver to the transfer agent and the Company a customary broker representation letter providing to the transfer agent and the Company any information the Company deems reasonably necessary to determine that the sale of the Shares is made in compliance with Rule 144, including, where and as may be appropriate, a certification that the Purchaser is not an Affiliate of the Company and regarding the length of time the Shares have been held. Upon receipt of such representation letter, the Company shall promptly direct its transfer agent to remove the legend referred to in Section 4.05 within two (2) Business Days from the appropriate book-entry accounts maintained by the transfer agent, and the Company shall bear all costs associated therewith. If Purchaser is not an Affiliate of the Company and has held the Shares for at least one year, if the book-entry account of such Shares still bears the legend referred to in Section 4.05, the Company agrees, upon request of Purchaser, to take all steps necessary to effect the removal of the legend described in Section 4.05 within two (2) Business Days from the appropriate book-entry accounts maintained by the transfer agent, and the Company shall bear all costs associated therewith, regardless of whether the request is made in connection with a sale or otherwise, so long as Purchaser provides to the Company any information the Company deems reasonably necessary to determine that the legend is no longer required under the Securities Act or applicable state laws, including (if there is no such registration statement), where and as may be appropriate, a certification that the holder is not an Affiliate of the Company and regarding the length of time the Shares have been held. The date by which such legend is so required to be removed pursuant to this Section 8.04 is referred to herein as the "**Required Legend Removal Date**."

Section 8.05 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.06 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.07 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided*, that prior to the Closing Date, Purchaser may, without the prior written consent of the Company, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.09 No Third-party Beneficiaries. Except as provided in Article VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS IN EACH CASE LOCATED IN THE CITY OF DALLAS AND COUNTY OF DALLAS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10(c).

Section 8.12 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.14 Termination.

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time at or prior to the Closing by Purchaser (with respect to Purchaser only), upon a breach in any material respect by the Company of any covenant or agreement set forth in this Agreement.

(b) Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate at any time at or prior to the Closing if a statute, rule, order, decree or regulation shall have been enacted or promulgated, or if any action shall have been taken by any Governmental Authority of competent jurisdiction that permanently restrains, permanently precludes, permanently enjoins or otherwise permanently prohibits the consummation of the transactions contemplated by this Agreement or makes the transactions contemplated by this Agreement illegal.

(c) In the event of the termination of this Agreement as provided in this Section 8.14, this Agreement shall forthwith become null and void. In the event of such termination, there shall be no liability on the part of any party hereto, except as set forth in Article VI of this Agreement.

Section 8.15 Recapitalization, Exchange, Etc. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all equity interests of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) that may be issued in respect of, in exchange for or in substitution of, the Shares, and shall be appropriately adjusted for combinations, unit splits, recapitalizations and the like occurring after the date of this Agreement.

Section 8.16 **Failure to Timely Deliver; Buy-In**. If the Company improperly fails to remove the legend referred to in Section 4.05 by the Required Legend Removal Date and if on or after the Business Day immediately following the Required Legend Removal Date the Purchaser (or any other Person in respect, or on behalf, of Purchaser) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that such Purchaser so anticipated receiving from the Company without any restrictive legend, then, in addition to all other remedies available to such Purchaser, the Company shall, within five (5) Business Days after such Purchaser's request and in such Purchaser's sole discretion, either (x) pay cash to such Purchaser in an amount equal to such Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Purchaser's balance account shall terminate and such shares shall be cancelled, or (y) promptly honor its obligation to remove the legend referred to in Section 4.05 from such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Purchaser in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Shares that the Company was required to deliver to such Purchaser by the Required Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Business Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Shares and ending on the date of such delivery and payment under this clause (y).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY:

AQUA METALS, INC.

By: /s/ Stephen R. Clarke
Title: CEO

PURCHASER:

INTERSTATE EMERGING INVESTMENTS, LLC

By: INTERSTATE BATTERIES, INC.,
its sole member

By: William McDade
Title: CFO

Signature Page to
Stock Purchase Agreement

Exhibit 10.2

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "**Agreement**"), dated as of May 18, 2016, is entered into by and between Aqua Metals, Inc., a Delaware corporation (the "Company"), and the investors that have executed this Agreement and are listed on the Schedule A attached hereto (individually, a "**Purchaser**" and collectively, the "**Purchasers**").

RECITALS

WHEREAS, the Company has authorized the sale by the Company to the Purchasers of up to 719,333 shares of common stock of the Company, par value $0.001 per share (the "**Common Stock**"); and

WHEREAS, the Company desires to sell to Purchasers, and Purchasers desire to purchase from the Company, shares of the Common Stock, on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I
Definitions

The following terms have the meanings specified or referred to in this **Article I**:

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise .

"**Agreement**" has the meaning set forth in the preamble.

"**Audited Financial Statements**" has the meaning set forth in Section 3.10.

"**Balance Sheet**" has the meaning set forth in Section 3.10.

"**Balance Sheet Date**" has the meaning set forth in Section 3.10.

"**Benefit Plan**" has the meaning set forth in Section 3.21(a).

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York are authorized or required by Law to be closed for business.

"**Bylaws**" means the Amended and Restated Bylaws of the Company, as may be amended, restated or modified from time to time.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"**Certificate of Incorporation**" means that certain First Amended and Restated Certificate of Incorporation of the Company filed with the Delaware Secretary of State on October 1, 2014, as may be amended, restated or modified from time to time.

"**Closing**" has the meaning set forth in Section 2.03.

"**Closing Date**" has the meaning set forth in Section 2.03.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Stock**" has the meaning set forth in the recitals.

"**Company**" has the meaning set forth in the preamble.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, loans, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by the Company and Purchaser concurrently with the execution and delivery of this Agreement.

"**Dollars**" or "**$**" means the lawful currency of the United States.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**Environmental Claim**" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

"**Environmental Notice**" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate** " means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Financial Statements**" has the meaning set forth in Section 3.10.

"**FINRA**" means the Financial Industry Regulatory Authority, Inc..

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Licenses**" has the meaning set forth in Section 3.19.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"**Insurance Policies**" has the meaning set forth in Section 3.17.

"**Intellectual Property Rights**" has the meaning set forth in Section 3.16.

"**Interim Balance Sheet**" has the meaning set forth in Section 3.10.

"**Interim Balance Sheet Date**" has the meaning set forth in Section 3.10.

"**Interim Financial Statements**" has the meaning set forth in Section 3.10.

"Interstate Battery Purchase Agreement" means that certain agreement between the Company and Interstate Emerging Investments, LLC, a Delaware limited liability company pursuant to which the Company will sell approximately $5,000,000 of shares of its Common Stock, at $7.12 per share.

"**Knowledge of the Company**" or "**the Company's Knowledge**" or any other similar knowledge qualification, means the actual knowledge of any director or officer of the Company.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Liabilities**" has the meaning set forth in Section 3.12.

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided*, that "**Losses**" shall not include any punitive or exemplary damages.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the business, results of operations, condition (financial or otherwise) or assets of the Company.

"**Money Laundering Laws**" has the meaning set forth in Section 3.31.

"**Multiemployer Plan**" has the meaning set forth in Section 3.21(c).

"**NASDAQ**" means the Nasdaq Capital Market.

"**OFAC**" has the meaning set forth in Section 3.32.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in Section 3.15(a).

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Placement Agent" means National Securities Corporation.

"**Purchase Price**" has the meaning set forth in Section 2.01.

"**Purchasers**" has the meaning set forth in the preamble.

"**Purchaser Indemnitees**" has the meaning set forth in Section 7.02.

"**Qualified Benefit Plan**" has the meaning set forth in Section 3.21(c).

"**Real Property**" means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Closing Date, by and among the Company and the Purchasers, substantially in the form attached hereto as Exhibit A

"**Release**" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**SEC**" means the Securities and Exchange Commission.

"**SEC Documents**" means the Company's reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act or the Securities Act and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Shares**" has the meaning set forth in Section 2.01.

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership, joint venture, or other business or corporate entity, enterprise or organization which is directly or indirectly (through one or more intermediaries) controlled by or owned fifty 50% or more by such Person.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Transaction Documents**" means this Agreement, the Registration Rights Agreement and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the consummation of the transactions contemplated hereby and thereby, as may be amended from time to time.

ARTICLE II
Purchase and Sale

Section 2.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing, the Company shall issue and sell to each Purchaser, and each Purchaser severally, but not jointly, shall purchase from the Company that number of shares of Common Stock (the "**Shares**") as is set forth opposite such Purchaser's name on the Schedule A, at a purchase price of $7.12 per share (the "**Purchase Price**").

Section 2.02 Transactions Effected at the Closing.

(a) At the Closing, each Purchaser shall deliver to the Company:

(i) the Purchase Price by wire transfer of immediately available funds to an account of the Company designated in writing by the Company to such Purchaser at least two (2) Business Days prior to the Closing; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by Purchaser at or prior to the Closing pursuant to Section 5.03 of this Agreement.

(b) At the Closing, the Company shall deliver to each Purchaser:

(i) evidence of the Shares credited to book-entry accounts maintained by the transfer agent of the Company (the "**Transfer Agent**"), bearing the legend or restrictive notation set forth in Section 4.05 of this Agreement, free and clear of all Encumbrances, other than transfer restrictions set forth herein, under the Bylaws and applicable federal and state securities laws; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by the Company at or prior to the Closing pursuant to Section 5.02 of this Agreement.

Section 2.03 Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the "**Closing**") to be held at 11:00 a.m., Eastern time, at the offices of Greenberg Traurig, LLP, 3161 Michelson Drive, Suite 1000, Irvine, CA 92612, or at such other time or on such other date or at such other place or by such other method as the Company and the Purchasers may mutually agree upon orally or in writing (the day on which the Closing takes place, the "**Closing Date**"); provided, however, that in no event shall the Closing Date be later than May 31, 2016.

Section 2.04 Use of Proceeds. The proceeds from the issuance of the Shares shall be used by the Company to purchase four kettles for use in lead recycling, for start up and expansion costs for the Company's Reno, Nevada lead recycling plant, and to provide working capital for the Company's operations.

ARTICLE III
Representations and Warranties of the Company

Except as set forth in the Disclosure Schedules, the Company represents and warrants to each Purchaser that the statements contained in this Article III are true and correct as of the date hereof. The Disclosure Schedules shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Article III, and the disclosures in any section or subsection of the Disclosure Schedules shall qualify other sections and subsections in this Article III only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

Section 3.01 Organization, Qualification and Authority of the Company. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to (a) enter into this Agreement and the other Transaction Documents to which the Company is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby and (b) own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.01 of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. The execution and delivery by the Company of this Agreement and any other Transaction Document to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. When each other Transaction Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, usury and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

Section 3.02 Capitalization.

(a) As set forth on Section 3.02(a) of the Disclosure Schedules, the authorized capital stock of the Company immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents will consist of 50,000,000 shares of Common Stock, of which (A) 15,559,022 shares will be issued and outstanding, (B) 20,894,979 shares will be issued and outstanding on a fully-diluted, as converted and as exercised basis, and (C) 4,633,710 shares will be reserved for issuance upon exercise of outstanding stock options and warrants.

(b) As of immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, (i) all of the issued and outstanding shares of Common Stock will have been duly authorized, validly issued, and will be fully paid and non-assessable, (ii) all of the issued and outstanding shares of Common Stock will have been issued in compliance with all applicable federal and state securities Laws, (iii) none of the issued and outstanding shares of Common Stock will have been issued in violation of any agreement, arrangement or commitment by the Company or any of its Affiliates or in violation of any preemptive or similar rights of any Person granted by the Company, and (iv) all of the Shares will have the rights, preferences, powers, restrictions and limitations set forth in the Certificate of Incorporation and under the Delaware General Corporation Law.

(c) Section 3.02(c) of the Disclosure Schedules also sets forth, as of immediately following the Closing after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, all outstanding or authorized (i) stock options and (ii) any warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating the Company to issue or sell any shares of capital stock of, or any other interest in, the Company, in each case, including the number and kind of securities reserved for issuance on exercise or conversion of any such securities or other rights, the exercise or conversion price of any such securities or other rights and any applicable vesting schedule for any such securities or other rights. Except as set forth on Section 3.02(c) of the Disclosure Schedules, the Company does not have outstanding, authorized, or in effect any stock appreciation, phantom stock, profit participation or similar rights. Except as set forth on Section 3.02(c) of the Disclosure Schedules, there are no voting trusts, stockholder agreements, proxies or other agreements, understandings or obligations in effect with respect to the voting, transfer or sale (including any rights of first refusal, rights of first offer or drag-along rights), issuance (including any pre-emptive or anti-dilution rights), redemption or repurchase (including any put or call or buy-sell rights), or registration (including any related lock-up or market standoff agreements) of any shares of capital stock or other securities of the Company.

(d) The Company's currently outstanding shares of Common Stock are quoted on the NASDAQ Capital Market, and the Company has not received any notice of delisting.

Section 3.03 Subsidiaries. Section 3.03 of the Disclosure Schedules contains a complete list of all of the Subsidiaries of the Company. Each such Subsidiary is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified as a foreign entity in all jurisdictions in which it is required to be so qualified. Except as set forth on Section 3.03 of the Disclosure Schedules, the Company does not presently have any other Subsidiaries or, directly or indirectly, own, control or have any interest in any shares or other ownership interest in any other Person. As to any Subsidiaries of the Company listed in Section 3.03 of the Disclosure Schedule, the Company owns, directly or indirectly, the equity interest in those Subsidiaries that are indicated in Section 3.03 of the Disclosure Schedule.

Section 3.04 SEC Documents. The Company has timely filed with the SEC all SEC Documents. The SEC Documents, including any audited or unaudited financial statements and any notes thereto or schedules included therein, at the time filed (in the case of registration statements, solely on the dates of effectiveness) (except to the extent corrected by a subsequently filed SEC Document filed prior to the date hereof), (i) did not 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 light of the circumstances under which they were made, not misleading, (ii) on their face complied as to form in all material respects with applicable requirements of the Exchange Act and the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iii) were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and (iv) fairly present (subject in the case of unaudited statements to normal, recurring and year-end audit adjustments) in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended.

Section 3.05 No Defaults; Violations. No material default exists in the due performance and observance of any term, covenant or condition of any material license, contract, indenture, mortgage, deed of trust, note, loan or credit agreement, or any other material agreement or instrument evidencing an obligation for borrowed money, or any other material agreement or instrument to which the Company is a party or by which the Company may be bound or to which any of the properties or assets of the Company is subject. The Company is not in violation of any term or provision of its Certificate of Incorporation or Bylaws, or in violation of any franchise, license, permit, applicable law, rule, regulation, judgment or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its properties or businesses.

Section 3.06 Consents. All consents, authorizations, approvals and orders required in connection with the execution, delivery, and performance by the Company and the Subsidiaries of each of the Transaction Documents and all ancillary documents to which it is a party, the consummation by the Company and the Subsidiaries of the transactions herein and therein contemplated and the compliance by the Company and the Subsidiaries with the terms hereof and thereof have been obtained. No consent, authorization or order of, and no filing with, any court, government agency or other body is required for the valid issuance, sale and delivery of the securities and the consummation of the transactions and agreements contemplated by this Agreement and as contemplated by the disclosures the SEC Documents.

Section 3.07 No Conflicts, etc. The execution, delivery, and performance by the Company of this Agreement and all Transaction Documents, the consummation by the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms hereof and thereof do not and will not, with or without the giving of notice or the lapse of time or both: (i) result in a material breach of, or conflict with any of the terms and provisions of, or constitute a material default under, or result in the creation, modification, termination or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any agreement or instrument to which the Company is a party that individually or in the aggregate would have a Material Adverse Effect; (ii) result in any violation of the provisions of the Certificate of Incorporation or Bylaws; or (iii) result in the Company's violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its properties or business constituted as of the date hereof that individually or in the aggregate would have a Material Adverse Effect.

Section 3.08 Disclosure Controls. The Company and its Subsidiaries maintain a system of "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure to be made; such disclosure controls and procedures are effective.

Section 3.09 Accounting Controls. The Company and its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, 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 GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no material weaknesses in the internal controls over financial reporting of the Company. The Company's auditors and the Audit Committee of the board of directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the ability of the Company to record, process, summarize and report financial information; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

Section 3.10 Financial Statements. Complete copies of the audited consolidated financial statements, including the notes thereto and supporting schedules, if any, of the Company and its Subsidiaries consisting of the balance sheet of the Company as at December 31 in each of the years 2014 and 2015 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at March 31, 2016 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Purchaser. The Financial Statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated and the supporting schedules, if any, present fairly the information required to be stated therein. The audited balance sheet of the Company as of December 31, 2015 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of March 31, 2016 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP.

Section 3.11 Independent Accountants. Armanino LLP, who have certified certain consolidated financial statements of the Company and its Subsidiaries, are independent public accountants with respect to the Company and its Subsidiaries within the applicable rules and regulations adopted by the SEC and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

Section 3.12 Undisclosed Liabilities. Except as set forth on Section 3.12 of the Disclosure Schedule, the Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those that are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date, and (b) those that have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.13 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company or any Subsidiary, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the Certificate of Incorporation, the Bylaws or other organizational documents of the Company;

(c) split, combination or reclassification of any shares of its capital stock;

(d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(h) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation, discharge or payment of any material debts, liens or entitlements;

(i) transfer, assignment or grant of any license or sublicense of any Intellectual Property Rights;

(j) any capital investment in, or any loan to, any other Person;

(k) acceleration, termination, material modification or amendment to or cancellation of any material contract to which the Company is a party or by which it is bound;

(l) any material capital expenditures;

(m) imposition of any Encumbrance upon any of the Company properties, capital stock or assets, tangible or intangible;

(n) adoption, modification or termination of any: (i) material employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(o) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders, directors, officers and employees;

(p) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(q) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(r) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof; or

(s) any contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.14 Disclosure of Agreements. The agreements and documents described in the SEC Documents conform to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the rules and regulations to be described therein or to be filed with the SEC, that have not been so described or filed. Each agreement or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the SEC Documents, or (ii) is material to the Company's business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company's knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal or state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the Company's Knowledge, any other party is in default thereunder and, to the Company's Knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder. To the Company's Knowledge, performance by the Company of the material provisions of such agreements or instruments will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its assets or businesses, including, without limitation, those relating to environmental laws and regulations.

Section 3.15 Title to Assets; Real Property.

(a) The Company has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Audited Financial Statements or acquired after the Interim Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) those items set forth in Section 3.15(a) of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Interim Balance Sheet;

(iii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company;

(v) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company; or

(vi) other imperfections of title or Encumbrances, if any, that individually or in the aggregate, have not had, and would not have, a Material Adverse Effect.

Section 3.16 Intellectual Property. The Company owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct its business as now conducted and as presently proposed to be conducted. To the Knowledge of the Company, the Company has not infringed, nor conflicted with, the Intellectual Property Rights of others. To the knowledge of the Company, there is no claim, action or proceeding being made or brought, being threatened, against the Company or any Subsidiary regarding their Intellectual Property Rights. The Company is not aware of any facts or circumstances that might reasonably give rise to any of the foregoing infringements or claims, actions or proceedings.

Section 3.17 Insurance. The Company is covered by valid, outstanding and enforceable policies or binders of fire, liability, product liability, umbrella liability, pollution and other environmental, real and personal property, workers' compensation, vehicular, directors and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company or its Affiliates and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**"), and true and complete copies of such Insurance Policies have been made available to Purchaser. Such Insurance Policies are in full force and effect and none of the Insurance Policies will lapse or terminate following the consummation of the transactions contemplated by this Agreement. Neither the Company nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound, except where such noncompliance would not result in a Material Adverse Effect. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

Section 3.18 Legal Proceedings; Governmental Orders.

(a) There are no material Actions pending or, to the Company's Knowledge, threatened against, or involving the Company or any of its Subsidiaries, or, to the Company's Knowledge, any executive officer or director of the Company, or by the Company or any of its Subsidiaries affecting any of its properties or assets (or by or against the Company or any Affiliate thereof and relating to the Company).

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its Subsidiaries or any of their properties or assets.

Section 3.19 Possession of Licenses and Permits. The Company and each of its Subsidiaries (A) possesses the licenses, permits, certificates, authorizations, consents and approvals (collectively, "**Governmental Licenses**") issued by the appropriate Governmental Authorities necessary to conduct its business as currently conducted as described in the SEC Documents, and (B) has obtained all necessary Governmental Licenses from other persons necessary to conduct its business, except, in each case of clauses (A) and (B), (i) as described in the SEC Documents or (ii) to the extent that any failure to possess any Governmental Licenses, provide any notice, make any filing, or obtain any Governmental Licenses would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; none of the Company and subsidiaries is in violation of, or in default under, any Governmental License, as except as would not reasonably be expected to have a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor the Subsidiary has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

Section 3.20 Environmental Laws. Except as described in the SEC Documents, (A) neither the Company nor any subsidiary is in violation of any Environmental Laws, except for those violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (B) each of the Company and its subsidiaries has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance in all material respects with their requirements except for those violations that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (C) there are no pending or, to the Company's Knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any subsidiary, and (D) to the Company's Knowledge, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an investigation, action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any subsidiary relating to Hazardous Materials or any Environmental Laws.

Section 3.21 Employee Benefit Matters.

(a) Section 3.21(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, or under which the Company has or may have any Liability, or with respect to which Purchaser or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 3.21(a) of the Disclosure Schedules, each, a "**Benefit Plan**"). With respect to each Benefit Plan, the Company has made available to Purchaser accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; and (iii) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service.

(b) Each Benefit Plan (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA and the Code). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable, nor has such revocation or unavailability been threatened. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company to a penalty under Section 502 of ERISA or to tax or penalty under Section 4975 of the Code. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. There is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits).

(c) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or foreign Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; or (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(d) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan; (ii) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); and (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan.

(e) Other than as required under Section 601 et seq. of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason, and neither the Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree welfare benefits to any individual.

Section 3.22 Employment Matters. The Company is not involved in any labor dispute or, to the Knowledge of the Company, is any such dispute threatened. To the Knowledge of the Company, none of the Company's employees is a member of a union, works council or labor organization. The Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects.

Section 3.23 No Registration Required. Assuming the accuracy of the representations and warranties of Purchaser contained in this Agreement, the sale and issuance of the shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the Company's knowledge, any authorized Representative acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

Section 3.24 No Integration. Neither the Company nor any of its Affiliates has, directly or indirectly through any agent, made any offers or sales of any security of the Company or solicited any offers to buy any security that is or will be integrated with the sale of the Shares in a manner that would require such registration under the Securities Act.

Section 3.25 No Side Agreements. There are no agreements by the Company, on the one hand, and Purchaser or any of their Affiliates, on the other hand, with respect to the transactions contemplated hereby other than the Transaction Documents, nor promises or inducements for future transactions between or among any of such parties.

Section 3.26 NASDAQ Listing of Shares. As of the Closing Date, the Shares will be approved for listing, subject to official notice of issuance, on the NASDAQ Capital Market.

Section 3.27 Taxes. Except as set forth in Section 3.27 of the Disclosure Schedules:

(a) The Company has timely filed all Tax Returns that it was required to file. All such Tax Returns were complete and correct in all respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been timely paid.

(b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, stockholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(d) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(e) The Company is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

Section 3.28 Books and Records. The minute books and stock record books of the Company, all of which have been made available to Purchaser, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain, in all material respects, accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of the Company, and no meeting, or action taken by written consent, of any such stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books.

Section 3.29 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of the Company.

Section 3.30 Related Party Transactions. Except as disclosed in the SEC Documents, there are no business relationships or related party transactions involving the Company or any other person required to be described in the SEC Documents that have not been described as required.

Section 3.31 Money Laundering Laws. The Company has not, and, to the Company's Knowledge, none of the officers, directors, employees or agents purporting to act on behalf of the Company or one of its Subsidiaries, as applicable, has, made any payment of funds of the Company or one of its Subsidiaries or received or retained any funds in violation of any law, rule or regulation relating to the "know your customer" and anti-money laundering laws of any jurisdiction (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any Governmental Authority involving the Company or one of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the Company's Knowledge, threatened.

Section 3.32 OFAC. The Company has not, and, to the Company's Knowledge, none of the respective directors, officers, agents or employees purporting to act on behalf of the Company or one of its Subsidiaries, as applicable, is currently the target of or reasonably likely to become the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company and its Subsidiaries will not directly or indirectly use the proceeds of the sale of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently the target of any U.S. sanctions administered by OFAC.

Section 3.33 Investment Company Act. The Company is not, nor upon the sale of the Shares as contemplated herein and the application of the net proceeds therefrom, will the Company be, an "investment company" or an entity "controlled" by an "investment company" (as such terms are defined in the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder).

Section 3.34 Foreign Corrupt Practices Act. Neither the Company nor any of the directors, employees or officers of the Company or, to the Company's Knowledge, any other person acting on behalf of the Company has, directly or indirectly, given or agreed to give any money, gift or similar benefit (other than legal price concessions to customers in the ordinary course of business) to any customer, supplier, employee or agent of a customer or supplier, or official or employee of any governmental agency or instrumentality of any government (domestic or foreign) or any political party or candidate for office (domestic or foreign) or any political party or candidate for office (domestic or foreign) or other person who was, is, or may be in a position to help or hinder the business of the Company (or assist it in connection with any actual or proposed transaction) that (i) might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past, might have had a Material Adverse Effect as reflected in any of the Financial Statements or (iii) if not continued in the future, might have a Material Adverse Effect. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the Foreign Corrupt Practices Act of 1977, as amended.

Section 3.35 Officer's Certificate. Any certificate pursuant to this Agreement signed by any duly authorized officer of the Company and delivered to Purchaser shall be deemed a representation and warranty by the Company to Purchaser as to the matters covered thereby).

ARTICLE IV
Representations and Warranties of Purchaser

Each Purchaser, with respect to itself only and not with respect any other Purchaser, represents and warrants to the Company that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Purchaser. Such Purchaser (i) if an entity, is 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 the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder, or (ii) if an individual, has the legal capacity to enter into and to consummate the transactions contemplated by the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by such Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) if an entity, conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of such Purchaser; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Purchaser; or (c) require the consent, notice or other action by any Person under any Contract to which Purchaser is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to such Purchaser in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.03 Investment Purpose. Such Purchaser is acquiring its Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the Securities Act; provided, however, by making the representations herein, such Purchaser does not agree, or make any representation or warranty, to hold any of the Shares for any minimum or other specific term and reserves the right to dispose of the Shares at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. Such Purchaser does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Shares in violation of applicable securities laws.

Section 4.04 Brokers. Except for the Placement Agent, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Purchaser.

Section 4.05 Accredited Investor Status. Such Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D, as promulgated under the Securities Act.

Section 4.06 SEC Documents. Such Purchaser acknowledges and agrees that the Company has provided or made available to it (through EDGAR, the Company's website or otherwise) all SEC Documents, as well as all press releases or investor presentations issued by the Company through the date of this Agreement that are included in a filing by the Company on Form 8-K or clearly posted on the Company's website.

ARTICLE V
Conditions to closing

Section 5.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing Date, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) This Agreement and each of the other Transaction Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to the parties.

(c) The Contemporaneous Closing of the transactions contemplated by the Interstate Battery Purchase Agreement.

Section 5.02 Conditions to Obligations of Purchaser. The obligations of each Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or such Purchaser's waiver, at or prior to the Closing, of each of the following conditions:

(a) The Company shall have obtained all governmental, regulatory or third party consents and approvals necessary for the sale of the Shares.

(b) The Placement Agent, on behalf of such Purchaser, shall have received a certificate duly executed by the President and Chief Executive Officer of the Company, dated as of the Closing, certifying:

(i) all representations and warranties of the Company shall be true and correct in all material respects as of the date hereof and at and as of the Closing Date, with the same force and effect as though made on and as of the Closing Date; and

(ii) the Company shall have performed all obligations and agreements and complied with all covenants and conditions contained in this Agreement to be performed or complied with by it prior to the Closing Date.

(c) The Placement Agent, on behalf of such Purchaser shall have received a certificate duly executed by the secretary or an assistant secretary (or equivalent officer) of the Company, dated as of the Closing, certifying:

(i) that attached thereto are true and complete copies of all resolutions and other consents adopted by the board of directors and stockholders of the Company authorizing and approving the execution, delivery, filing and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions and consents are in full force and effect as of the Closing and are all the resolutions and consents adopted in connection with the transactions contemplated hereby and thereby;

(ii) that attached thereto are true and complete copies of the Certificate of Incorporation and Bylaws of the Company and that such organizational documents are in full force and effect as of the Closing; and

(iii) the names and signatures of the officers of the Company authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(d) The Company shall have delivered to the Placement Agent, on behalf of such Purchaser, (i) a good standing certificate (or its equivalent) for the Company and each of the Subsidiaries from the secretary of state of the State of Delaware and (ii) a foreign qualification certificate (or its equivalent) for the Company and each of the Subsidiaries from the secretary of state or similar Governmental Authority of each jurisdiction in which the Company has qualified, or is required to qualify, to do business as a foreign corporation.

(e) The Company shall have delivered, or caused to be delivered, to such Purchaser each of the following, each in form and substance satisfactory to such Purchaser:

(i) evidence of the Shares credited to book-entry accounts maintained by the Transfer Agent, bearing the legend or restrictive notation set forth in Section 8.04 of this Agreement, free and clear of all Encumbrances, other than transfer restrictions under the Transaction Documents, the Bylaws and applicable federal and state securities laws;

(ii) an opinion of legal counsel to the Company, dated as of the Closing Date, stating that the Company is duly incorporated, the Transaction Documents have been duly authorized, and that the Shares are duly authorized, fully paid and non-assessable, which opinion may be subject to such assumptions and conditions are normally set forth in opinions of legal counsel in respect of such matters; and

(iii) such other documents or instruments as such Purchaser reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(f) The Company shall have fully complied with, or obtained appropriate consents or waivers with respect to, its obligations under each of the agreements or other documents identified on Section 3.02(c) of the Disclosure Schedules, including with respect to any outstanding rights of first refusal, rights of first offer, pre-emptive rights or anti-dilution rights or redemption or repurchase rights.

(g) The NASDAQ shall have authorized, upon official notice of issuance, the listing of the Shares.

(h) No notice of delisting from the NASDAQ shall have been received by the Company with respect to the Shares.

(i) The Shares shall not have been suspended by the SEC or the NASDAQ from trading on the NASDAQ nor shall suspension by the SEC or the NASDAQ have been threatened in writing by the SEC or the NASDAQ.

Section 5.03 Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) Each Purchaser shall have delivered to the Company cash in an amount equal to such Purchaser's Purchase Price by wire transfer in immediately available funds, to an account or accounts designated in writing by the Company to the Purchasers.

ARTICLE VI
Covenants

Section 6.01 Taking of Necessary Action. Each of the parties hereto shall use its commercially reasonable efforts promptly to take or cause to be taken all action and promptly to do or cause to be done all things necessary, proper or advisable under applicable Law and regulations to consummate and make effective the transactions contemplated by this Agreement. Without limiting the foregoing, the Company and the Purchasers shall each use its commercially reasonable efforts to make all filings and obtain all consents of Governmental Authorities that may be necessary or, in the reasonable opinion of the other parties, as the case may be, advisable for the consummation of the transactions contemplated by the Transaction Documents. The Company shall promptly and accurately respond, and shall use its commercially reasonable efforts to cause its transfer agent to respond, to reasonable requests for information (which is otherwise not publicly available) made by any Purchaser or its auditors relating to the actual holdings of such Purchaser or its accounts; provided, that the Company shall not be obligated to provide any such information that could reasonably result in a violation of applicable Law or conflict with the Company's insider trading policy or a confidentiality obligation of the Company. The Company shall use its commercially reasonable efforts to cause its transfer agent to reasonably cooperate with each Purchaser to ensure that the Shares are validly and effectively issued to such Purchaser and that such Purchaser's ownership of the Shares following the Closing is accurately reflected on the appropriate books and records of the Company's transfer agent.

Section 6.02 Supplemental Listing Application. The Company shall file prior to the Closing a supplemental listing application with the NASDAQ to list the Shares.

ARTICLE VII
Indemnification

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations, warranties and covenants contained herein shall survive the Closing and shall remain in full force and effect until the date that is two (2) years from the Closing Date; *provided*, that the representations and warranties in Section 3.17, Section 3.20, Section 3.21, Section 3.22 and Section 3.27 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 7.02 Indemnification By Company. Subject to the other terms and conditions of this Article VII, the Company shall indemnify and defend each Purchaser and each Purchaser's Affiliates and their respective Representatives (collectively, the " **Purchaser Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement.

Section 7.03 Payments. Once a Loss is agreed to by the Company or finally adjudicated to be payable pursuant to this Article VII, the Company shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should the Company not make full payment of any such obligations within such fifteen (15)-Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Company or final, non-appealable adjudication to the date such payment has been made at a rate of 18% per annum. Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

Section 7.04 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 7.05 Effect of Investigation. Neither the representations, warranties and covenants of the Company, nor the right to indemnification of any Purchaser Indemnitee making a claim under this Article VII with respect thereto, shall be affected or deemed waived by reason of any investigation made by or on behalf of a Purchaser Indemnitee (including by any of its Representatives) or by reason of the fact that a Purchaser Indemnitee or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of a Purchaser Indemnitee's waiver of any condition set forth in Section 5.02.

ARTICLE VIII
Miscellaneous

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.02):

If to the Company:	1010 Atlantic Avenue Alameda, California 94501 E-mail: Steve.Clarke@aquametals.com Attention: Stephen R. Clarke
with a copy to:	Greenberg Traurig, LLP 3161 Michelson Drive, Suite 1000 Irvine, California 92612 Facsimile: (949) 732-6501 E-mail: donahued@gtlaw.com Attention: Daniel K. Donahue, Esq.
If to Purchaser:	to its address, facsimile number or e-mail address set forth on such Purchaser's signature page hereto
with a copy to:	Golenbock Eiseman Assor Bell & Peskoe LLP 437 Madison Avenue New York, New York 10022 Facsimile: (212)754-0330 E-mail: ahudders@tgolenbock.com Attention: Andrew D. Hudders, Esq.

Section 8.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 8.04

(a) Transfer Agent Instructions. If a Purchaser effects a sale, assignment or transfer of the Shares, the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or, if the Shares are eligible for legend removal under Section 8.04(c), credit shares to the applicable balance accounts at the Depository Trust Company ("**DTC**") in such name and in such denominations as specified by such Purchaser to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the transfer agent shall issue such shares to such Purchaser, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 8. 04(c) below. The Company acknowledges that a breach by it of its obligations under this Section 8.04(a) will cause irreparable harm to each Purchaser. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 8.04(a) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 8.04(a), that each Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company's transfer agent on each Effective Date (as defined and provided in the Registration Rights Agreement), provided that the applicable Purchaser(s) or its or their representatives and/or brokers have provided the documentation to counsel reasonably necessary or required for the basis of such legal opinion. Any fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Shares shall be borne by the Company.

(b) Legends. Each Purchaser understands that the Shares have been issued pursuant to an exemption from registration or qualification under the Securities Act and applicable state securities laws, and except as set forth below, the Shares 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, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(c) Removal of Legends. Certificates evidencing the Shares shall not be required to contain the legend set forth in Section 8.04(b) above or any other legend (i) following any sale of such Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (ii) if such Shares are eligible to be sold, assigned or transferred under Rule 144 without restriction under the volume or disclosure requirements, (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Purchaser provides the Company with an opinion of counsel to such Purchaser, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Shares may be made without restrictive legends and thereafter made without registration under the applicable requirements of the Securities Act, or (v) if such legend is not required under applicable requirements of the Securities Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC, provided that such Purchaser provides the Company with a reasonable description of the authority it is relying upon). If a legend is not required pursuant to the foregoing, the Company, at its expense, shall no later than two (2) Business Days following the delivery by a Purchaser to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Shares (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Purchaser as may be required above in this Section 8.04(c), as directed by such Purchaser, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program, credit the aggregate number of shares of Common Stock to which such Purchaser shall be entitled to such Purchaser's or its designee's balance account with the DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch for delivery (via reputable overnight courier) to such Purchaser, a certificate representing such Shares that is free from all restrictive and other legends, registered in the name of such Purchaser or its designee (the date by which such credit is so required to be made to the balance account of such Purchaser's or such Purchaser's nominee with DTC or such certificate is required to be delivered to such Purchaser pursuant to the foregoing is referred to herein as the "**Required Delivery Date**").

(d) Failure to Timely Deliver; Buy-In. If the Company improperly fails to (i) issue and dispatch for delivery (or cause to be so dispatched) to a Purchaser by the Required Delivery Date a certificate representing the Shares so delivered to the Company by such Purchaser that is free from all restrictive and other legends or (ii) credit the balance account of such Purchaser's or such Purchaser's nominee with DTC for such number of Shares so delivered to the Company, and if on or after the business day immediately following the Required Delivery Date such Purchaser (or any other Person in respect, or on behalf, of such Purchaser) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that such Purchaser so anticipated receiving from the Company without any restrictive legend, then, in addition to all other remedies available to such Purchaser, the Company shall, within five (5) Business Days after such Purchaser's request and in such Purchaser's sole discretion, either (x) pay cash to such Purchaser in an amount equal to such Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Purchaser's balance account shall terminate and such shares shall be cancelled, or (y) promptly honor its obligation to so deliver to such Purchaser a certificate or certificates or credit such Purchaser's DTC account representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Purchaser in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Shares that the Company was required to deliver to such Purchaser by the Required Delivery Date multiplied by (B) the lowest closing sale price of the Common Stock on any Business Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Shares and ending on the date of such delivery and payment under this clause (y).

Section 8.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.07 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.08 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including, as contemplated below, any assignee of any of the Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers. A Purchaser may assign some or all of its rights hereunder in connection with any transfer of any of its Shares without the consent of the Company, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights.

Section 8.09 No Third-party Beneficiaries. Except as provided in Article VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK IN EACH CASE LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10(c).

Section 8.12 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.14 Termination.

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time at or prior to the Closing by Purchaser (with respect to Purchaser only), upon a breach in any material respect by the Company of any covenant or agreement set forth in this Agreement.

(b) Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate at any time at or prior to the Closing if a statute, rule, order, decree or regulation shall have been enacted or promulgated, or if any action shall have been taken by any Governmental Authority of competent jurisdiction that permanently restrains, permanently precludes, permanently enjoins or otherwise permanently prohibits the consummation of the transactions contemplated by this Agreement or makes the transactions contemplated by this Agreement illegal.

(c) In the event of the termination of this Agreement as provided in this Section 8.14, this Agreement shall forthwith become null and void. In the event of such termination, there shall be no liability on the part of any party hereto, except as set forth in Article VI of this Agreement.

Section 8.15 Recapitalization, Exchange, Etc. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all equity interests of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) that may be issued in respect of, in exchange for or in substitution of, the Shares, and shall be appropriately adjusted for combinations, unit splits, recapitalizations and the like occurring after the date of this Agreement.

Section 8.16 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under the Transaction Documents are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as, and the Company acknowledges that the Purchasers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Purchasers are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Purchasers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Purchaser to purchase Shares pursuant to the Transaction Documents has been made by such Purchaser independently of any other Purchaser. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with such Purchaser making its investment hereunder and that no other Purchaser will be acting as agent of such Purchaser in connection with monitoring such Purchaser's investment in the Shares or enforcing its rights under the Transaction Documents. The Company and each Purchaser confirms that each Purchaser has independently participated with the Company in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Shares contemplated hereby was solely in the control of the Company, not the action or decision of any Purchaser, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Purchaser. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY:

AQUA METALS, INC.

By: /s/ Stephen R. Clarke
Stephen R. Clarke
Chief Executive Officer

Signature Page to
Stock Purchase Agreement

IN WITNESS WHEREOF, Purchaser and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

PURCHASERS:

For Entity Purchasers

Print Name: _____

Signature:_____

Name of Signatory: _____

Title: _____

Telephone No. _____

Facsimile Number: _____

E-mail Address: _____

Social Security # or Fed ID #_____

_____
Street Address

_____
Street Address – 2nd line

_____
City, State, Zip

For Individual Purchasers:

Print Name: _____

Signature:_____

Social Security # or Fed ID #:_____

If Joint Investment, 2nd investor should complete:

Print Name:_____

Signature:_____

Social Security # or Fed ID #:_____

Telephone No. _____

Facsimile No. _____

E-mail Address: _____

_____
Street Address

_____
Street Address – 2nd line

_____
City, State, Zip

Exhibit 10.3

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made and entered into as of this 18th day of May, 2016 (the "Closing Date") by and among Aqua Metals, Inc., a Delaware corporation (the "Company"), and the "Investors" named in that certain Stock Purchase Agreement by and among the Company and the Investors (the "Purchase Agreement"). Capitalized terms used herein have the respective meanings ascribed thereto in the Purchase Agreement unless otherwise defined herein.

The parties hereby agree as follows:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"Investors" means the Investors identified in the Purchase Agreement and any Affiliate or permitted transferee of any Investor who is a subsequent holder of any Registrable Securities.

"Prospectus" means (i) any prospectus (preliminary or final) included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any "issuer free writing prospectus" as defined in Rule 433 under the 1933 Act.

"Register," "registered" and "registration" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act (as defined below), and the declaration or ordering of effectiveness of such Registration Statement or document.

"Registrable Securities" means (i) the Shares and (ii) any other securities issued or issuable with respect to or in exchange for the Shares, whether by merger, charter amendment, or otherwise; provided, that, a security shall cease to be a Registrable Security upon (A) sale pursuant to a Registration Statement or Rule 144 under the 1933 Act, or (B) such security becoming eligible for sale without restriction by the Investors pursuant to Rule 144.

"Registration Statement" means any registration statement of the Company filed under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"Required Investors" means the Investors beneficially owning a majority of the Registrable Securities.

"SEC" means the U.S. Securities and Exchange Commission.

"1933 Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"1934 Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

2. Registration.

(a) Registration Statements.

(i) Initial Registration Statement. On or before August 1, 2016 (the "Filing Deadline"), the Company shall prepare and file with the SEC one Registration Statement on Form S-3 (or, if Form S-3 is not then available to the Company, on such form of registration statement as is then available to effect a registration for resale of the Registrable Securities), covering the resale of the Registrable Securities. Subject to any SEC comments, such Registration Statement shall include the plan of distribution attached hereto as Exhibit A; provided, however, that no Investor shall be named as an "underwriter" in the Registration Statement without the Investor's prior written consent, provided, further, any Investor who unreasonably refuses to be named as an underwriter in the Registration Statement shall be excluded as a selling shareholder from the Registration Statement. Such Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. Such Registration Statement shall not include any shares of Common Stock or other securities for the account of any other holder without the prior written consent of the Required Investors; provided, however, that the Registration Statement may also include the Other Shares. The Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the Investors prior to its filing or other submission. If a Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, the Company will make pro rata payments to each Investor, as liquidated damages and not as a penalty, in an amount equal to 1.5% of the aggregate amount invested by such Investor pursuant to the Purchase Agreement for each 30-day period or pro rata for any portion thereof following the Filing Deadline for which no Registration Statement is filed with respect to the Registrable Securities. Such payments shall constitute the Investors' exclusive monetary remedy for such events, but shall not affect the right of the Investors to seek injunctive relief. Such payments shall be made to each Investor in cash no later than three (3) Business Days after the end of each 30-day period.

(b) Expenses. The Company will pay all expenses associated with effecting the registration of the Registrable Securities, including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws, listing fees and the Investors' other reasonable expenses in connection with the registration, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold and excluding the fees and disbursements of counsel to any Investor.

(c) Effectiveness.

(i) The Company shall use commercially reasonable efforts to have any Registration Statement declared effective as soon as practicable. The Company shall notify the Investors by facsimile or e-mail as promptly as practicable, and in any event, within twenty-four (24) hours, after any Registration Statement is declared effective and shall simultaneously provide the Investors with copies of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(i i) For not more than forty (40) consecutive days or for a total of not more than sixty (60) days in any twelve (12) month period, the Company may suspend the use of any Prospectus included in any Registration Statement contemplated by this Section in the event that the Company determines in good faith that such suspension is necessary to (A) 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 Company, in the best interests of the Company or (B) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include an 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 the Prospectus in light of the circumstances under which they were made, not misleading (an "Allowed Delay"); provided, that the Company shall promptly (a) notify each Investor in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of an Investor) disclose to such Investor any material non-public information giving rise to an Allowed Delay, (b) advise the Investors in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use commercially reasonable efforts to terminate an Allowed Delay as promptly as practicable.

(d) Rule 415; Cutback If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires any Investor to be named as an "underwriter", the Company shall use its best efforts to persuade the SEC that the offering contemplated by a Registration Statement is a bona fide secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Investors is an "underwriter". In the event that, despite the Company's best efforts and compliance with the terms of this Section 2(d), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "Cut Back Shares") and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "SEC Restrictions"). Any cut-back imposed pursuant to this Section 2(d) shall be allocated among the Investors on a pro rata basis, unless the SEC Restrictions otherwise require or provide or the Investors otherwise agree. Any cut-back imposed pursuant to a SEC comment shall be applied, first, to securities of the Company that are registered pursuant to an agreement subsequent to the date of this Agreement and, next, to the Registrable Securities, and, next, to the Registrable Securities and any securities registered pursuant to an agreement entered into contemporaneously with (including those securities with registration rights of Interstate Emerging Investments, LLC) and prior to the date of this Agreement, on a pro rata basis taken together. No liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions (such date, the "Restriction Termination Date" of such Cut Back Shares). From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this Section 2 (including the liquidated damages provisions) shall again be applicable to such Cut Back Shares; provided, however, that (i) the Filing Deadline for the Registration Statement including such Cut Back Shares shall be ten (10) Business Days after such Restriction Termination Date, and (ii) the date by which the Company is required to obtain effectiveness with respect to such Cut Back Shares under Section 2(c) shall be the 60th day immediately after the Restriction Termination Date.

(e) Right to Piggyback Registration.

(i) If at any time following the date of this Agreement that any Registrable Securities remain outstanding and are not freely tradable under Rule 144 (A) there is not one or more effective Registration Statements covering all of the Registrable Securities and (B) the Company proposes for any reason to register any shares of Common Stock under the 1933 Act (other than pursuant to a registration statement on Form S-4 or Form S-8 (or a similar or successor form)) with respect to an offering of Common Stock by the Company for its own account or for the account of any of its stockholders, it shall at each such time promptly give written notice to the holders of the Registrable Securities of its intention to do so (but in no event less than thirty (30) days before the anticipated filing date) and, to the extent permitted under the provisions of Rule 415 under the 1933 Act, include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within fifteen (15) days after receipt of the Company's notice (a "Piggyback Registration"). Notwithstanding the foregoing, the aforementioned piggyback registration rights will not apply to any demand registration right being exercised pursuant to that certain Investor Rights Agreement entered into between the Company and Interstate Emerging Investments, LLC, of even date herewith, as it may be amended.

(ii) Notwithstanding the foregoing, (A) if such registration involves an underwritten public offering, the Investors must sell their Registrable Securities to, if applicable, the underwriter(s) at the same price and subject to the same underwriting discounts and commissions that apply to the other securities sold in such offering (it being acknowledged that the Company shall be responsible for other expenses as set forth in Section 2(b)) and subject to the Investors entering into customary underwriting documentation for selling stockholders in an underwritten public offering, and (B) if, at any time after giving written notice of its intention to register any Registrable Securities pursuant to Section 2(e)(i) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to cause such registration statement to become effective under the 1933 Act, the Company shall deliver written notice to the Investors and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration; provided, however, that nothing contained in this Section 2(e)(ii) shall limit the Company's liabilities and/or obligations under this Agreement, including, without limitation, the obligation to pay liquidated damages under this Section 2.

3 . Company Obligations. The Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use commercially reasonable efforts to cause such Registration Statement to become effective and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Registration Statement as amended from time to time, have been sold, (ii) the date on which all Registrable Securities covered by such Registration Statement may be sold without restriction pursuant to Rule 144; or (iii) one year from the date of this Agreement (the "Effectiveness Period") and advise the Investors in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Registration Statement and the Prospectus as may be necessary to keep the Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) provide copies to the Investors to review each Registration Statement and all amendments and supplements thereto no fewer than seven (7) days prior to their filing with the SEC and not file any document to which such Investor reasonably objects;

(d) use commercially reasonable efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(e) prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Investors in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such U.S. jurisdictions requested by the Investors and do any and all other commercially reasonable acts or things necessary or advisable to enable the distribution in such U.S. jurisdictions of the Registrable Securities covered by the Registration Statement**;** provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any U.S. jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(f) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

(g) immediately notify the Investors, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include an 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 not misleading in light of the circumstances then existing;

(h) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Investors in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Investors are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 3(i), "Availability Date" means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the 90th day after the end of such fourth fiscal quarter); and

(i) With a view to making available to the Investors the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investors to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until such date as all of the Registrable Securities shall have been resold pursuant to a Registration Statement, Rule 144 or otherwise in a transaction in which the transferee receives freely tradable shares; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish to each Investor upon request, as long as such Investor owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Investor of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration. In the event that the Company fails to comply with the requirements of this Section 3(i) after the 180th day after the Closing Date, the Company will make pro rata payments to each Investor, as liquidated damages and not as a penalty, in an amount equal to 1.5% of the aggregate amount invested by such Investor pursuant to the Purchase Agreement for each 30-day period or pro rata for any portion thereof until such failure is cured; provided, however, that only Investors that have not sold or otherwise disposed of all of their Registrable Securities prior to such failure shall be entitled to receive liquidated damages pursuant to this Section 3(i). Such payments shall constitute the Investors' exclusive monetary remedy for such events, but shall not affect the right of the Investors to seek injunctive relief. Such payments shall be made to each Investor in cash no later than three (3) Business Days after the end of each 30-day period.

4. Omitted.

5. Obligations of the Investors.

(a) Each Investor shall furnish in writing 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 the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Investor of the information the Company requires from such Investor if such Investor elects to have any of the Registrable Securities included in the Registration Statement. An Investor shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Investor elects to have any of the Registrable Securities included in the Registration Statement. In the event that an Investor does not provide such information on a timely basis, the Company shall provide prompt written notice to such Investor that the Registrable Securities attributable to such Investor will be excluded from the Registration Statement unless such Investor provides the required information within one (1) Business Day after its receipt of such notice. If such Investor does not provide the required information to the Company by the end of the next Business Day after its receipt of such notice, the Company shall have the right to exclude the Registrable Securities attributable to such Investor from the Registration Statement and the Investor shall not be entitled to receive any liquidated damages pursuant to the provisions of this Agreement with respect to such Registration Statement. Notwithstanding anything in this Agreement to the contrary, any Investor that elects not to have any of its Registrable Securities included in the Registration Statement, shall not be entitled to receive any liquidated damages pursuant to the provisions of this Agreement with respect to such Registration Statement.

(b) Each Investor, by its 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 a Registration Statement hereunder, unless such Investor has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(ii) or (ii) the happening of an event pursuant to Section 3(h) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made.

6. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Investor and its officers, directors, members, managers, partners, trustees, employees and agents and other representatives, successors and assigns, and each other person, if any, who controls such Investor within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement or omission or alleged omission of any material fact contained in any Registration Statement, any Prospectus, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information herein called a "Blue Sky Application"); (iii) the omission or alleged omission to state in a Blue Sky Application a material fact required to be stated therein or necessary to make the statements therein not misleading; (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration; or (v) any failure to register or qualify the Registrable Securities included in any such Registration Statement in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company will undertake such registration or qualification on an Investor's behalf and will reimburse such Investor, and each such officer, director or member and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Investor or any such controlling person in writing specifically for use in such Registration Statement or Prospectus.

(b) Indemnification by the Investors. Each Investor agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Investor be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Investor in connection with any claim relating to this Section 6 and the amount of any damages such Investor has otherwise been required to pay by reason of such untrue statement or omission) received by such Investor upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, or (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The indemnifying party shall not be liable hereunder for any settlements entered into by an indemnified party without the indemnifying party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 6 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

7. Miscellaneous.

(a) Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Investors.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in Section ___ of the Purchase Agreement.

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that such Investor complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Investors; *provided, however*, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investors after giving effect to such transaction.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be delivered via facsimile or other form of electronic communication, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company: AQUA METALS, INC.

By: _____
Name:
Title:

(Name of Investor)

By:
Name:
Title:

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which all of the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

Exhibit 10.5

CREDIT AGREEMENT

BETWEEN

AQUA METALS, INC.
("Borrower")

AND

INTERSTATE EMERGING INVESTMENTS, LLC
("Lender")

May 18, 2016

TABLE OF CONTENTS

Exhibits and Schedules

Exhibit A	Form of Convertible Term Note
Exhibit B	Form of Compliance Certificate
Disclosure Schedule	
Security Schedule	

CREDIT AGREEMENT

This CREDIT AGREEMENT (this "**Agreement**"), dated as of May 18, 2016 (the "**Effective Date**"), is made by and between INTERSTATE EMERGING INVESTMENTS, LLC ("**Lender**"), a Delaware limited liability company, and AQUA METALS, INC. ("**Borrower**"), a Delaware corporation. In consideration of the mutual promises contained in this Agreement and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. DEFINITIONS AND SHARED PROVISIONS.

1.1 Definitions. As used in this Agreement, each of the following terms has the meaning given to such term in this Section 1.1 or in the section, subsection or other parts of this Agreement referred to below:

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"**AMR**" means Aqua Metals Reno, Inc., a Delaware corporation.

"**Attorneys' Fees**" means the expenses and reasonable fees of counsel to the parties incurring the same, excluding costs or expenses of in-house counsel (whether or not accounted for as general overhead or administrative expenses), but otherwise including printing, photostating, duplicating and other expenses, air freight charges, and fees billed for paralegals. Such term shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any manner of proceeding is brought with respect to the matter for which such fees and expenses were incurred.

"**Authorized Officer**" means with respect to the execution and delivery of any document or any other action, any of the officers set forth in an officers' certificate delivered to Lender which are designated therein as being authorized for such document or action.

"**Bankruptcy Code**" means the United States Bankruptcy Code, Title 11 U.S.C., as amended.

"**Borrower**" shall have the meaning assigned to such term in the preamble hereof.

"**Borrowing**" means a borrowing of new Loans.

"**Business Day**" means a day, other than a Saturday or Sunday, on which commercial banks are open for business with the public in Dallas, Texas.

"**Cash Equivalents**" means Investments in:

(a) marketable obligations, maturing within 12 months after acquisition thereof, issued or unconditionally guaranteed by the United States of America or an instrumentality or agency thereof and entitled to the full faith and credit of the United States of America.

(b) demand deposits, and time deposits (including certificates of deposit) maturing within 12 months from the date of deposit thereof, with any office of Lender or with a domestic office of any national or state bank or trust company which is organized under the Laws of the United States of America or any state therein, which has capital, surplus and undivided profits of at least $500,000,000, and whose long term certificates of deposit have an investment grade rating.

(c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any commercial bank meeting the specifications of clause (b) above.

(d) open market commercial paper, maturing within 270 days after acquisition thereof, which has an investment grade rating.

(e) Investments in money market or other mutual funds substantially all of whose assets comprise securities of the types described in clauses (a) through (d) above.

"**Change of Control**" means any of the following shall occur:

(a) the direct or indirect sale, transfer, conveyance or other disposition, in one or a series of related transactions, of the voting stock in Borrower, the result of which is that a Person becomes the beneficial owner, directly or indirectly, of more than 40% of the voting stock of Borrower, measured by voting power rather than number of shares,

(b) the shares of Borrower cease to be publicly traded,

(c) at any time after the Effective Date, individuals who were either directors of Borrower on Effective Date or directors approved (by recommendation, nomination, election or otherwise) by a majority of the directors cease to constitute a majority of the members of the board of directors of Borrower, or

(d) a "change of control" or "change of ownership" (or any term substantially equivalent to any of the foregoing phrases in this clause (d)) (in each case, as such term or phrase is defined in any indenture or other agreement evidencing or relating to any Indebtedness) occurs.

"**Closing Date"** means the later of (a) the "Closing Date" as defined in the Stock Purchase Agreement by and between Borrower and Lender dated as of the date hereof or (b) the date which all of the conditions in Section 4.1 have been satisfied.

"**Collateral**" means all property of any kind which is subject to a Lien in favor of Lender or which, under the terms of any Security Document, is purported to be subject to such a Lien.

"**Common Stock**" means (i) Borrower's shares of Common Stock, $0.001 par value per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

"**Consolidated**" refers to the consolidation of any Person, in accordance with GAAP, with its properly consolidated subsidiaries. References herein to a Person's Consolidated financial statements, financial position, financial condition, liabilities, etc. refer to the consolidated financial statements, financial position, financial condition, liabilities, etc. of such Person and its properly consolidated subsidiaries.

"**Conversion Obligations**" has the meaning given to such term in Section 2.5 of this Agreement.

"**Convertible Security**" means any stock, equity securities, debt securities or similar instruments that are convertible (directly or indirectly) into or exchangeable for Common Stock.

"**Convertible Term Note**" means the convertible promissory note delivered by Borrower to Lender pursuant to Section 2.1 of this Agreement and all renewals, replacements, amendments, modifications and extensions thereof.

"**Credit Agreement**" **or** "**this Agreement**" means this Credit Agreement, as from time to time supplemented, amended or restated.

"**Credit Party**" means any of Borrower and each Subsidiary of Borrower.

"**Debtor Laws**" means the Bankruptcy Code, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, arrangement, receivership, insolvency, reorganization or similar Laws from time to time in effect affecting the rights of creditors generally.

"**Default**" means any Event of Default and any default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an Event of Default.

"**Default Rate**" means, at the time in question with respect to any amount (including any Loan) owed to Lender under this Agreement or other Loan Documents, the rate per annum equal to three percent (3%) above the Fixed Interest Rate then in effect; provided, in each case that the Default Rate shall never exceed the Maximum Rate.

"**Disclosure Schedule**" means the *Disclosure Schedule* attached to this Agreement.

"**Distribution**" means (a) any dividend or other distribution made by a Credit Party on or in respect of Equity in such Credit Party or any other Credit Party (including any option or warrant to buy such Equity), or (b) any payment made by a Credit Party to purchase, redeem, acquire or retire any Equity in such Credit Party or any other Credit Party (including any such option or warrant).

"**Eligible Market**" means The New York Stock Exchange, Inc., the NYSE MKT, The Nasdaq Stock Market, the NASDAQ Global Select Market or the Nasdaq Capital Market.

"**Environmental Laws**" means any and all Laws relating to (a) the protection of the environment, (b) emissions, discharges or releases of pollutants, contaminants, chemicals or hazardous or toxic substances or wastes into the environment including ambient air, surface water, ground water or land, or (c) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

"**Equity**" in any Person means any share of capital stock issued by such Person, any general or limited partnership interest, profits interest, capital interest, membership interest, or other equity interest in such Person, any option, warrant or any other right to acquire any share of capital stock or any partnership, profits, capital, membership or other equity interest in such Person, and any other voting security issued by such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, together with the regulations from time to time promulgated with respect thereto.

"**ERISA Affiliate**" means any Person who for purposes of Title IV of ERISA is a member of Borrower's controlled group, or under common control with Borrower, within the meaning of Section 414 of the Tax Code, and the regulations promulgated and rulings issued thereunder.

"**ERISA Plan**" means any Plan or MultiEmployer Plan.

"**ERISA Plan Funding Rules**" means the rules in the Tax Code and ERISA (and related regulations and other guidance) regarding minimum funding standards and minimum required contributions to ERISA Plans as set forth in Sections 412, 430 and 436 of the Tax Code and Sections 302 and 303 of ERISA (and as set forth in Section 412 of the Tax Code and Section 302 of ERISA for periods prior to the effective date of the Pension Protection Act of 2006).

"**ERISA Termination Event**" means (a) the occurrence with respect to any ERISA Plan of (1) a reportable event described in Sections 4043(c) (5) or (6) of ERISA or (2) any other reportable event described in Section 4043(c) of ERISA other than a reportable event not subject to the provision for thirty-day notice to the PBGC pursuant to a waiver by the PBGC under Section 4043(a) of ERISA, or (b) the withdrawal of Borrower or any ERISA Affiliate from an ERISA Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the filing of a notice of intent to terminate any ERISA Plan or the treatment of any ERISA Plan amendment as a termination under Section 4041 of ERISA, or (d) the institution of proceedings to terminate any ERISA Plan by the PBGC under Section 4042 of ERISA, or (e) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan, or (f) any failure by any ERISA Plan to satisfy the ERISA Plan Funding Rules, whether or not waived, or (g) the filing pursuant to Section 412(c) of Tax Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 430(j) of the Tax Code with respect to any ERISA Plan, or (h) a determination that any ERISA Plan is, or is expected to be, an at-risk plan (as defined in Section 430 of the Tax Code or Section 303 of ERISA) and the funding target attainment percentage (as defined in Section 430 of the Tax Code or Section 303 of ERISA) for such plan is, or is expected to be, less than 60 percent, or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any ERISA Affiliate.

"**Established Misconduct**" means the gross negligence and willful misconduct of an Indemnified Party as determined by a court competent jurisdiction by final and nonappeable judgment.

"**Event of Default**" means any of the events specified in Section 8.1 hereof, provided that any requirement in connection with such event for the giving of notice or the lapse of time, or the happening of any further condition, event or act has been satisfied.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Lender being organized under the laws of, or having its principal office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) United States federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to a Loan pursuant to a Law in effect on the date hereof, and (c) any United States federal withholding Taxes imposed under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Tax Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Tax Code.

"**Financing Lease**" means (i)any lease of Property if the then present value of the minimum rental commitment thereunder should, in accordance with GAAP, be capitalized on a balance sheet of the lessee, and (ii)any other lease obligations which are capitalized on a balance sheet of the lessee.

"**Fiscal Quarter**" means each period of 3 calendar months ending March 31, June 30, September 30 and December 31 of each year.

"**Fiscal Year**" means each period of twelve calendar months ending December 31 of each year.

"**Fixed Interest Rate**" means, as of any date, 11.00%, per annum, compounded on the first day of each month.

"**Fundamental Transaction**" means that, after the Issuance Date, Borrower shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into another Person, (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of Borrower to another Person, (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination immediately prior to such stock purchase or business combination), (v) reorganize, recapitalize or reclassify its Common Stock, or (vi) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act), other than Lender and its Affiliates or any Related Party thereof, is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock (excluding any debt securities convertible into equity) normally entitled to vote in the election of directors ("**Voting Stock**") of Borrower (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock held by a Parent Entity) or 50% of the aggregate economic interests in Borrower (or its successor by merger, consolidation or purchase of all or substantially all of its assets).

"**GAAP**" means those generally accepted accounting principles and practices which are recognized as such by the Financial Accounting Standards Board (or any generally recognized successor) and which, in the case of Borrower and its Consolidated subsidiaries, are applied for all periods after the date hereof in a manner consistent with the manner in which such principles and practices were applied to the Initial Financial Statements. If any change in any accounting principle or practice is required by the Financial Accounting Standards Board (or any such successor) in order for such principle or practice to continue as a generally accepted accounting principle or practice, all reports and financial statements required hereunder with respect to Borrower may be prepared in accordance with such change, but all calculations and determinations to be made hereunder may be made in accordance with such change only after notice of such change is given to Lender and Lender agrees to such change insofar as it affects the accounting of Borrower.

"**Governmental Authority**" means any nation or government, any agency, department, state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"**Governmental Requirement**" means any Law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other direction or requirement (including, without limitation, any of the foregoing which relate to environmental standards or controls, energy regulations and occupational, safety and health standards or controls) of any arbitrator, court or other Governmental Authority, which exercises jurisdiction over any Credit Party or any of its Property.

"**Guarantors**" collectively, means AQUA METALS RENO, INC., a Delaware corporation, AQUA METALS OPERATIONS, INC., a Delaware corporation, and any Subsidiary of Borrower that now or hereafter executes and delivers a guaranty to Lender pursuant to Section 6.4, and each a "**Guarantor**".

"**Guaranty**" means the Guaranty of even date herewith made by each Guarantor unconditionally guaranteeing the payment of the Convertible Term Note and the performance by Borrower of its obligations under this Agreement and the other Loan Documents.

"**Guaranty Obligation**" of any Person means any agreement or understanding of such Person pursuant to which such Person guarantees, or in effect guarantees, any Indebtedness, lease, dividends or other obligations (the "Primary Obligations") of any other Person (the "Primary Obligor") in any manner, whether directly or indirectly, contingently or absolutely, in whole or in part, including without limitation this Agreement:

(a) to purchase such Primary Obligation or any Property constituting direct or indirect security therefor;

(b) to advance or supply funds (a)for the purchase or payment of any such Primary Obligation, or (b)to maintain working capital or other balance sheet conditions of the Primary Obligor or otherwise to maintain the net worth or solvency of the Primary Obligor;

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Primary Obligation of the ability of the Primary Obligor to make payment of such Primary Obligation; or

(d) otherwise to assure or hold harmless the owner of any such Primary Obligation against loss in respect thereof;

provided, that "Guaranty Obligation" shall not include endorsements that are made in the ordinary course of business of negotiable instruments or documents for deposit or collection. The amount of any Guaranty Obligation shall be deemed to be the maximum amount for which the guarantor may be liable pursuant to the agreement that governs such Guaranty Obligation, unless such maximum amount is not stated or determinable, in which case the amount of such obligation shall be the maximum reasonably anticipated liability thereon, as determined by such guarantor in good faith.

"**Hedging Contract**" means (a) any agreement providing for options, swaps, floors, caps, collars, forward sales or forward purchases involving interest rates, commodities or commodity prices, equities, currencies, bonds, or indexes based on any of the foregoing, (b) any option, futures or forward contract traded on an exchange, and (c) any other derivative agreement or other similar agreement or arrangement.

"**Indebtedness**" of any Person at a particular date means the sum (without duplication) at such date of (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services or which is evidenced by a note, bond, debenture, or similar instrument, (b) all obligations of such Person under any Financing Lease, (c) all obligations of such Person in respect of letters of credit, acceptances, or similar obligations issued or created for the account of such Person, (d) all Guaranty Obligations of such Person in respect of any Indebtedness of any other Person, (e) all liabilities secured by any Lien on any Property owned by such Person, whether or not such Person has assumed or otherwise become liable for the payment thereof, and (f) any liability of such Person in respect of unfunded vested benefits under a Plan or MultiEmployer Plan.

"**Indemnified Parties**" means Lender, its Affiliates and the directors, offices, employees, agents and advisors of Lender and its Affiliates.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Initial Financial Statements**" means (a) the annual audited Consolidated and consolidating balance sheet of Borrower dated as of December 31, 2015, which is the end of Borrower's most recent complete Fiscal Year, and the related statements of income, stockholders' equity and cash flows for the Fiscal Year ending ended such date, and (b) the unaudited Consolidated and consolidating quarterly balance sheet of Borrower for Borrower's most recent Fiscal Quarter.

"**Insolvent**" means with respect to any Person, that such Person (a) is insolvent (as such term is defined in the United States Bankruptcy Code, Title 11 U.S.C., as amended (the "Code"), and with all terms used in this Section that are defined in the Code having the meanings ascribed to those terms in the text and interpretive case law applicable to the Code), or (b) the sum of such Person's debts, including absolute and contingent liabilities, the Obligations or guarantees thereof, exceeds the value of such Person's assets, at a fair valuation, and (c) such Person's capital is unreasonably small for the business in which such Person is engaged and intends to be engaged. Such Person has incurred (whether under the Loan Documents or otherwise), or intends to incur debts which will be beyond its ability to pay as such debts mature. In determining whether a Person is "Insolvent" all rights of contribution of each Credit Party against other Credit Parties under the Guaranty, at Law, in equity or otherwise shall be taken into account.

"**Interstate Group Members**" means Interstate Battery System International, Inc. and its Subsidiaries.

"**Investment**" means any investment, made directly or indirectly, in any Person or any property, whether by purchase, acquisition of shares of capital stock, indebtedness or other obligations or securities or by loan, advance, capital contribution or otherwise and whether made in cash, by the transfer of property, or by any other means.

"**Issuance Date**" means the earlier to occur of the date that (i) shares of Common Stock are issued by Borrower to Lender pursuant to the Stock Purchase Agreement or (ii) the Warrants are issued by Borrower to Lender hereunder.

"**Law**" means any statute, law, regulation, ordinance, rule, treaty, judgment, order, decree, permit, concession, franchise, license, this Agreement or other governmental restriction of the United States or any state or political subdivision thereof or of any foreign country or any department, province or other political subdivision thereof. Any reference to a Law includes any amendment or modification to such Law, and all regulations, rulings, and other Laws promulgated under such Law.

"**Lender**" means INTERSTATE EMERGING INVESTMENTS, LLC, a Delaware limited liability company.

"**Liabilities**" means, as to any Person, all indebtedness, liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (whether statutory or otherwise), or preference, priority or other security, Credit Agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention, any Financing Lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable Law of any jurisdiction in respect of any of the foregoing) that secures an obligation owed to, or a claim by, a Person other than the owner of the Property.

"**Loans**" has the meaning given to such term in Section 2.1.

"**Loan Documents**" means the Convertible Term Note, this Agreement, the Security Documents, and any and all other agreements or instruments now or hereafter executed by any Credit Party and accepted by Lender to evidence or secure the payment or performance of any or all of the Obligations, as renewed, amended or supplemented from time to time.

"**Losses**" means the following: any and all losses, liabilities, damages (whether actual, consequential, punitive or otherwise denominated), demands, claims, administrative or legal proceedings, actions, judgments, causes of action, assessments, fines, penalties, costs and expenses (including Attorneys' Fees and the fees of outside accountants and environmental consultants), of any and every kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote.

"**Material Adverse Change**" means a material adverse change from the state of affairs presented in the Initial Financial Statements, or as represented or warranted to Lender in any Loan Document or other document, to (a) Borrower's Consolidated financial condition, (b) the ability of Lender to enforce any of the Loan Documents, (c) the ability of the Credit Parties (taken as a whole) to fulfill in a timely manner their obligations under the Loan Documents to which they are a party, (d) the business, operations or Properties (taken as a whole), or (e) the ability of Lender to realize on all or a material portion of the Collateral (other than as a result of an action taken or not taken that is solely in the control of Lender).

"**Material Adverse Effect**" means any material adverse effect upon (a) Borrower's Consolidated financial condition, (b) the ability of Lender to enforce any of the Loan Documents, (c) the ability of the Credit Parties (taken as a whole) to fulfill in a timely manner their obligations under the Loan Documents to which they are a party, (d) the business, operations or Properties (taken as a whole), or (e) the ability of Lender to realize on all or a material portion of the Collateral (other than as a result of an action taken or not taken that is solely in the control of Lender).

"**Maturity Date**" means the third anniversary of the Closing Date.

"**Maximum Rate**" means the maximum nonusurious rate of interest that Lender is permitted under applicable Law to contract for, take, charge, or receive with respect to the Loans.

"**Multiemployer Plan**" means any plan described in Section 4001(a)(3) of ERISA.

"**Obligations**" means all present and future Indebtedness, obligations and liabilities of any Credit Party to Lender, and all renewals and extensions thereof, or any part thereof, evidenced by or arising pursuant to this Agreement or any other Loan Document, regardless of whether such Indebtedness, obligations and liabilities are direct, indirect, fixed, contingent, joint, several or joint and several.

"**Optional Prepayment**" has the meaning given to such term in Section 2.4 of this Agreement.

"**Options**" means any rights or options to subscribe for or purchase Common Stock or Convertible Securities.

"**Organizational Documents**" of any entity means the organizational documents pursuant to which such entity was created and is governed, such as articles of incorporation, bylaws, articles of organization, regulations or partnership. In the case of any trustee, Organizational Documents means the trust, this Agreement or other documents which govern actions of the trustee in his or her capacity as trustee.

"**Other Connection Taxes**" means, with respect Lender, Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"**Permitted Investments**" means (a) Cash Equivalents, (b) property used in the ordinary course of business of the Credit Parties, (c) current assets arising from the sale or lease of goods and services in the ordinary course of business by the Credit Parties or from sales permitted under Section 7.5 of this Agreement, (d) Investments by Borrower in any of its Subsidiaries which are Guarantors, (e) loans and advances to employees and officers of any Credit Party in the ordinary course of business for any business purpose in an aggregate amount not to exceed the Threshold Amount, and (f) acquisitions of or capital contributions to or other Investments in a Person or property that has been consented to by Lender (such consent shall not be unreasonably withheld).

"**Permitted Liens**" means:

(a) statutory Liens for taxes, assessments or other governmental charges or levies which are not yet delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(b) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's and mechanics' liens;

(c) Liens arising out of judgments or awards against any Credit Party not giving rise to an Event of Default;

(d) Liens arising from deposits made in connection with obtaining worker's compensation or other unemployment insurance;

(e) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(f) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(g) Liens on cash deposits to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, insurance, leases, government contracts, trade contracts, performance and return of money bonds, letters of credit and other similar obligations (exclusive of obligations for the payment of borrowed money) entered into in the ordinary course of business;

(h) security deposits to public utilities or to any municipalities or governmental authority or other public authorities when required by such utility, municipality, governmental authority or other public authority in connection with the supply of services or utilities entered into in the ordinary course of business;

(i) statutory or common law rights of setoff of depository banks with respect to funds of any Credit Party at such banks to secure fees and charges in connection with returned items or the standard fees and charges of such banks in connection with deposit accounts maintained by any Credit Party at such banks (but not any other debt or other obligations);

(j) purchase money Liens or the interests of lessors under Financing Leases so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired.

(k) Liens in favor Green Bank, N.A. to secured obligations under the Loan Agreement between GREEN BANK, N.A. and AMR dated November 3, 2015, as amended, supplemented, restated or otherwise modified from time to time, provided that such Liens on the four kettles for use in lead recycling purchased with the Loans shall be subordinate to Lender's Liens on such four kettles; and

(l) Liens under the Security Documents.

"**Person**" means any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated organization, Governmental Authority, or any other form of entity.

"**Plan**" means any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower or any ERISA Affiliate of Borrower during the preceding six years and which is covered by Title IV of ERISA or Section 412 of the Tax Code, other than a Multiemployer Plan.

"**Prepayment Premium**" has the meaning given to such term in Section 2.4 of this Agreement.

"**Principal Market**" means the Nasdaq Capital Market; provided, however, that in the event that Borrower's Common Stock is ever listed or traded on the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the NYSE Amex, or the OTC Bulletin Board (it being understood that as used herein "OTC Bulletin Board" shall also mean any successor or comparable market quotation system or exchange to the OTC Bulletin Board such as the OTCQB operated by the OTC Markets Group, Inc.), then the "Principal Market" shall mean such other market or exchange on which Borrower's Common Stock is then listed or traded.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"**Regulation U**" means Regulation U issued by the Board of Governors of the Federal Reserve System as in effect from time to time.

"**Regulatory Change**" means either: (1) the introduction of or any change after the date of this Agreement (including any change by way of imposition or increase of reserve requirements included in the calculation of the interest rate used to calculate interest accruing under the Convertible Term Note) in any Law applicable to Lender or its Affiliates, or in the generally accepted interpretation by the institutional lending community of any such Law, or in the interpretation of any such Law asserted by any regulator, court or other Governmental Authority; or (2) the compliance by Lender or its affiliates with any new guideline, request or directive after such date from any central bank or other Governmental Authority (whether or not having the force of Law); provided that notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Regulatory Change**", regardless of the date enacted, adopted or issued.

"**Related Party**" means, with respect to any specified Person, such Person's affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's affiliates.

"**Reno Plant**" means AMR's lead recycling plant located or to be constructed on real property with an address of 2500 Peru Drive, Reno, Nevada that has been pledged as Collateral pursuant to the Security Documents.

"**Security Documents**" means the instruments listed in the *Security Schedule* and all other security agreements, deeds of trust, mortgages, chattel mortgages, pledges, guaranties, subordination agreements, intercreditor agreements, financing statements, continuation statements, extension agreements and other agreements or instruments now, heretofore, or hereafter delivered by any Credit Party to Lender in connection with agreement or any transaction contemplated hereby to secure or guarantee the payment of any part of the Obligations or the performance of any Credit Party's other duties and obligations under the Loan Documents.

"**Security Schedule**" means the *Security Schedule* attached to this Agreement.

"**Share Issue Price**" means $7.12.

"**Stock Purchase Agreement**" means that certain Stock Purchase Agreement, dated May 18, 2016, by and between Borrower and Lender.

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership, joint venture, or other business or corporate entity, enterprise or organization which is directly or indirectly (through one or more intermediaries) controlled by or owned fifty 50% or more by such Person.

"**Successor Entity**" means the Person formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been entered into.

"**Tax Code**" means the Internal Revenue Code of 1986, as amended.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Commitment Amount**" means $5,000,000.

"**Threshold Amount**" means $250,000.

"**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded including any day on which the Principal Market is open for trading for a period of time less than the customary time.

"**UCC**" means the Texas Uniform Commercial Code, as the same may hereafter be amended.

"**Unfunded Benefit Liabilities**" means, with respect to any ERISA Plan, the amount (if any) by which the present value of all benefit liabilities (within the meaning of Section 4001(a)(16) of ERISA) under the ERISA Plan exceeds the market value of all assets of the ERISA Plan available to pay such benefit liabilities, as determined on the most recent valuation date of the ERISA Plan and in accordance with the provisions of ERISA for calculating the potential liability of Borrower or any ERISA Affiliate of Borrower under Title IV of ERISA.

"**Warrant Owner**" means INTERSTATE EMERGING INVESTMENTS, LLC and its permitted assigns.

"**Warrants**" means the warrants to purchase shares of Common Stock that are issued by Borrower to Warrant Owner hereunder, substantially in the form of Exhibits C-1 and C-2, and all warrants issued upon transfer, exchange or in replacement of any of the foregoing.

"**Warrant Shares**" means shares of Common Stock issuable to the Warrant Owner upon exercise of all or any portion of either of the Warrants.

1.2 Shared Provisions. Lender and Borrower intend that this Agreement and other Loan Documents share consistent notice requirements and other important provisions. Those shared provisions comprise Section 11.11 through 11.26, which will apply to and govern both this Agreement and other Loan Documents.

2. AMOUNT AND TERMS OF LOAN.

2.1 Commitments to Lend; Convertible Term Note; Warrants. Subject to the terms and conditions hereof, including the issuance of the Warrants by Borrower to Lender, Lender agrees to make a single advance to Borrower (herein called "**Loans**") in an amount equal to the Term Commitment Amount on the Closing Date.

2.1.1 The obligation of Borrower to repay to Lender the aggregate amount of all Loans made by Lender, together with interest accruing in connection therewith, will be evidenced by a single convertible promissory note (herein called the "**Convertible Term Note**") in the form attached as **Exhibit A** with appropriate insertions. The amount of principal owing on the Convertible Term Note at any given time shall be the aggregate amount of all Loans theretofore made by Lender minus all payments of principal theretofore received by Lender on such Convertible Term Note and minus all principal amounts on such Convertible Term Note converted into shares of Common Stock. No portion of any Loan which has been repaid or converted may be reborrowed.

2.2 Use of Proceeds. Borrower shall use all Loans to purchase four kettles for use in lead recycling and for start up costs, expansion costs and working capital for the Reno Plant. In no event will the funds from any Loan be used directly or indirectly by any Person for personal, family, household or agricultural purposes or for the purpose, whether immediate, incidental or ultimate, of purchasing, acquiring or carrying any "margin stock" (as such term is defined in Regulation U promulgated by the Board of Governors of the Federal Reserve System) or to extend credit to others directly or indirectly for the purpose of purchasing or carrying any such margin stock. Borrower represents and warrants that Borrower is not engaged principally, or as one of Borrower's important activities, in the business of extending credit to others for the purpose of purchasing or carrying such margin stock.

2.3 Interest and Fees Payable to Lender.

2.3.1 *Interest Rates*. Subject to the limitations set forth in Section 11.2, (1) each Loan will bear interest on each day outstanding at the Fixed Interest Rate in effect on such day, and (2) notwithstanding the foregoing, after maturity and when any Event of Default has occurred and is continuing, at Lender's election by written notice to the Borrower, all Loans will bear interest on each day outstanding at the applicable Default Rate, and all past due payments of principal, interest and fees then due and payable to Lender will also bear interest at the Default Rate.

2.3.2 *Maximum Rate*. Notwithstanding the foregoing: (1) the Obligations will never bear interest in excess of the Maximum Rate, and (2) if at any time the rate at which interest payable on the Convertible Term Note is limited to the Maximum Rate (by reason of the preceding clause (1), Section 11.2 or the references to the Maximum Rate in the definitions set forth in Section 1.1), the Convertible Term Note will bear interest at the Maximum Rate and will continue to bear interest at the Maximum Rate until such time as the total amount of interest accrued on the Convertible Term Note equals the total interest that would have accrued on the Convertible Term Note had the interest not been limited to the Maximum Rate.

2.4 Optional Prepayments by Borrower. Upon at least five (5) Business Days' notice to Lender, on or after the one year anniversary of the Closing Date, Borrower may (subject to Lender's conversion right), prepay the Convertible Term Note, in whole or in part, so long as the aggregate amounts of all partial prepayments of principal on the Convertible Term Note equals $25,000 or any higher integral multiple of $1,000, and each prepayment of principal under this section must be accompanied by all interest then accrued and unpaid on the principal so prepaid and the Prepayment Premium (such payment of principal, interest and Prepayment Premium, the "**Optional Prepayment**"). Any payment or conversion in respect of the principal of the Loans, due to the request of Borrower, made on or prior to eighteen (18) months after the Closing Date shall be accompanied by a prepayment or conversion premium equal to ten percent (10%) of the principal of the Loans prepaid or converted ("**Prepayment Premium**"). In lieu of accepting the Optional Prepayment, Lender shall have the rights, in its sole and absolute discretion, upon at least one (1) Business Day's notice to Borrower before the Optional Prepayment, to convert the Optional Prepayment into that number of common shares of Borrower (as appropriately adjusted in the event of any equity dividend, equity split, combination, reorganization, recapitalization, reclassification or other similar event since the Closing Date) equal to the quotient obtained by dividing (i) the amount of the Optional Prepayment by (ii) the Share Issue Price. No fractional common shares shall be issued and the value of any fractional shares shall be paid by Borrower to Lender in cash concurrently with any conversion. As promptly as practicable after the conversion of the Optional Prepayment and the issuance of shares of Common Stock for such conversion, Borrower (at its expense) will issue to Lender and credit such shares of Common Stock to book-entry accounts maintained by Borrower's transfer agent for the Common Stock (the "**Transfer Agent**"). Any principal or interest prepaid or converted pursuant to this section will be in addition to, and not in lieu of, all payments otherwise required to be paid under the Loan Documents at the time of such prepayment or conversion.

2.5 Optional Conversion by Lender. Upon at least one (1) Business Day's notice to Borrower, Lender shall have the right, in its sole and absolute discretion, at any time to convert any outstanding principal of any Loan (such Obligations to be converted, the "**Conversion Obligations**") into that number of common shares of Borrower (as appropriately adjusted in the event of any equity dividend, equity split, combination, reorganization, recapitalization, reclassification or other similar event since the Closing Date) equal to the quotient obtained by dividing (i) the amount of the Conversion Obligations by (ii) the Share Issue Price (such price as may be adjusted from time to time, the "**Conversion Price**"). No fractional common shares shall be issued and the value of any fractional shares shall be paid by Borrower to Lender in cash concurrently with any conversion. As promptly as practicable after the conversion of the Conversion Obligations and the issuance of shares of Common Stock for such conversion, Borrower (at its expense) will issue to Lender and credit such shares of Common Stock to book-entry accounts maintained by the Transfer Agent.

2.6 Limitations on Conversions. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Borrower shall not effect any conversion of Conversion Obligations, and Lender shall not have the right to convert any Conversion Obligations, to the extent that after giving effect to such issuance after conversion, Lender (together with Lender's Affiliates, and any other persons acting as a group together with Lender or any of Lender's Affiliates), would beneficially own in excess of 19.99% of the outstanding shares of Common Stock (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitation, the "**Beneficial Ownership Cap**"). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by Lender and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Conversion Obligations with respect to which such determination is being made, but shall exclude the number of shares of Common Stock that would be issuable upon (i) exercise of the remaining, nonexercised portion of each of the Warrants beneficially owned by Lender or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of Borrower (including, without limitation, any other securities of Borrower or its subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by Lender or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2.6, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules and regulations promulgated thereunder. In addition, for purposes of this Section 2.6, "group" has the meaning set forth in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Borrower shall not effect any conversion of Conversion Obligations, and Lender shall not have the right to convert and Conversion Obligations, to the extent that after giving effect to such issuance after conversion, the cumulative aggregate of all exercises or conversions as a whole under the Convertible Term Note and each of the Warrants, as the case may be, together with the issuance of 702,247 shares of Common Stock pursuant to the Stock Purchase Agreement, would result in the issuance of shares of Common Stock (including, for the avoidance of doubt, any Warrant Shares issued under either of the Warrants and shares of Common Stock under this Agreement) that (i) have, or will have upon issuance, voting power in excess of 19.99% of the voting power of the Common Stock outstanding immediately before the Issuance Date or (ii) represent, or will represent upon issuance, in excess of 19.99% of the number of shares of Common Stock outstanding immediately before the Issuance Date (the maximum amount of shares of Common Stock issuable in compliance with the foregoing limitations (i) and (ii), the "**Total Issuance Cap**"). The term "**Cap**" as used herein refers to either the Beneficial Ownership Cap or the Total Issuance Cap, whichever may be applicable. To the extent that any limitation contained in this Section 2.6 applies, the determination of whether the Conversion Obligations are convertible (in relation to other securities owned by Lender together with any Affiliates) and of which portion of the Conversion Obligations is convertible shall be in the sole discretion of Lender, and the conversion of Conversion Obligations shall be deemed to be Lender's determination of whether Conversion Obligations are convertible (in relation to other securities owned by Lender together with any Affiliates) and of which portion of Conversion Obligations is convertible. For purposes of this Section 2.6, in determining the number of outstanding shares of Common Stock, Lender may rely on the number of outstanding shares of Common Stock as reflected in (i) Borrower's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the United States Securities and Exchange Commission, as the case may be, (ii) a more recent public announcement by Borrower or (iii) a more recent notice by Borrower or Borrower's Transfer Agent to Lender setting forth the number of shares of Common Stock then outstanding. Upon the request of Lender, Borrower shall promptly, and in any event within one Trading Day of such request, confirm to Lender the number shares of Common Stock then outstanding.

2.7 Adjustment of Conversion Price.

The Conversion Price shall be adjusted from time to time as follows:

2.7.1 Adjustment upon Subdivision or Combination of Shares of Common Stock. If Borrower at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If Borrower at any time on or after the Issuance Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment under this Section 2.7.1 shall become effective at the close of business on the date the subdivision or combination becomes effective.

2.7.2 Par Value. Notwithstanding anything to the contrary in this Agreement, in no event shall the Conversion Price be reduced below the par value of Borrower's Common Stock.

2.8 Fundamental Transactions.

2.8.1 If, at any time while Conversion Obligations are outstanding, there occurs any Fundamental Transaction (including, without limitation, one pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock), then the Holder shall have the right thereafter to receive, upon conversion of the Conversion Obligations, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property purchasable upon the conversion of the Conversion Obligations prior to such Fundamental Transaction), the same amount and kind of shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights), if any, that Lender would have been entitled to receive upon the consummation of such Fundamental Transaction had the Conversion Obligations been converted immediately prior to the record date for such Fundamental Transaction, as adjusted in accordance with the provisions of this Agreement. Upon the occurrence of any Fundamental Transaction, the Successor Entity, if any, shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Agreement and the Convertible Term Note referring to the "Borrower" shall refer instead to the Successor Entity), and may exercise every right and power of Borrower and shall assume all of the obligations of Borrower under this Agreement and the Convertible Term Note with the same effect as if such Successor Entity had been named as Borrower herein. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and any adjustment under this Section 2.8 shall be without duplication for any adjustment or distribution made under Section 2.7.

2.8.2 In the event that Borrower at any time grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**") Lender will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which Lender could have acquired if Lender had held the number of shares of Common Stock acquirable upon complete conversion of the Conversion Obligations (without regard to any limitations on the conversion of Conversion Obligations), immediately before the record date for the grant, issuance or sale of such Purchase Rights, or, if no such record date is established, the date as of which the record holders of shares of Common Stock are determined for the grant, issuance or sale of such Purchase Rights.

2.9 Reservation of Shares. Borrower covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue shares of Common Stock upon conversion of the Conversion Obligations as herein provided, the number of shares of Common Stock which are then issuable and deliverable upon the conversion of all Conversion Obligations, free from preemptive or any other contingent purchase rights of Persons other than Lender (taking into account the adjustments and restrictions in Section 2.7 and 2.8). Such reservation shall comply with the provisions of Section 2.4 and 2.5. Borrower covenants that all shares of Common Stock so issuable and deliverable shall, upon issuance in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. Borrower will take all such actions as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed. If, notwithstanding the foregoing, and not in limitation thereof, at any time while the Convertible Term Note remains outstanding Borrower does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon Conversion of the Conversion Obligations at least a number of shares of Common Stock equal to the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all Conversion Obligations (without regard to any limitations on conversion contained herein) (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then Borrower shall immediately take all action necessary to increase Borrower's authorized shares of Common Stock to an amount sufficient to allow Borrower to reserve the Required Reserve Amount for all Conversion Obligations. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, Borrower shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, Borrower shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

2.10 Legends. Lender understands that the Convertible Term Note and the shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations have not been registered pursuant to the provisions of the Securities Act of 1933, as amended (the "**Securities Act**"), and the Convertible Term Note and shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations will bear the following restrictive legend (in addition to any legend required under applicable state securities laws):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR BLUE SKY LAWS. THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR BLUE SKY LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY PROPOSED TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

Borrower, at its sole cost, shall remove the legend described in Section 2.10 (or instruct the Transfer Agent to so remove such legend) from the certificates evidencing the Convertible Term Note and shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, if (A) such shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations are sold pursuant to an effective registration statement under the Securities Act, (B) such Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, are sold or transferred pursuant to Rule 144 (if the transferor is not an Affiliate of Borrower), or (C) such Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, are eligible for sale under Rule 144, without the requirement for Borrower to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable) as to such securities and without volume or manner of sale restrictions. In connection with a sale of the Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, by Lender in reliance on Rule 144, Lender or its broker shall deliver to the Transfer Agent and Borrower a customary broker representation letter providing to the Transfer Agent and Borrower any information Borrower deems reasonably necessary to determine that the sale of the Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, is made in compliance with Rule 144, including, where and as may be appropriate, a certification that Lender is not an Affiliate of Borrower and regarding the length of time the Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, have been held. Upon receipt of such representation letter, Borrower shall promptly remove the legend refereed to in this Section 2.10 from the Convertible Term Note or direct its Transfer Agent to remove the legend referred to in this Section 2.10 from the shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations from the appropriate book-entry accounts maintained by the Transfer Agent, in each case within two (2) Business Days, and Borrower shall bear all costs associated therewith. If Lender is not an Affiliate of Borrower and has held the Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, for at least one year, if the book-entry account of such shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations or certificate for the Convertible Term Note still bears the legend referred to in this Section 2.10, Borrower agrees, upon request of Lender, to take all steps necessary to effect the removal of the legend described in this Section 2.10 within two (2) Business Days from the appropriate book-entry accounts maintained by the Transfer Agent or the Convertible Term Note, and Borrower shall bear all costs associated therewith, regardless of whether the request is made in connection with a sale or otherwise, so long Lender provides to Borrower any information Borrower deems reasonably necessary to determine that the legend is no longer required under the Securities Act or applicable state laws, including (if there is no such registration statement), where and as may be appropriate, a certification that such holder is not an Affiliate of Borrower and regarding the length of time the Convertible Term Note or shares of Common Stock issuable and deliverable upon conversion of the Conversion Obligations, as applicable, have been held.

2.11 Noncircumvention. Borrower hereby covenants and agrees that Borrower will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, 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 will at all times in good faith carry out all the provisions of this Agreement and take all action as may be required to protect the rights of Lender. Without limiting the generality of the foregoing, Borrower (i) shall not increase the par value of any shares of Common Stock receivable upon the conversion of the Conversion Obligations above the Conversion Price then in effect, (ii) shall use all reasonable efforts to take all such actions as may be necessary or appropriate in order that Borrower may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of the Conversion Obligations and (iii) shall, so long as any of Conversion Obligations are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Conversion Obligations, the Required Reserve Amount. If Borrower is restricted by the Principal Market from issuing and delivering the lesser of the (i) Beneficial Ownership Cap or (ii) Total Issuance Cap, then Borrower shall use its best efforts to obtain the approval of the requisite holders of the issued and outstanding voting capital stock of Borrower required by the listing requirements of the Principal Market.

2.12 Investor Rights Agreement. The shares of Common Stock issuable upon conversion of the Conversion Obligations shall be subject to the terms and conditions of that certain Investor Rights Agreement and Lender shall be entitled to all of the rights and subject to all of the obligations under such Investor Rights Agreement. The shares of Common Stock issuable upon conversion of the Conversion Obligations shall be deemed "Registrable Securities" as defined in such Investor Rights Agreement.

2.13 Payment in Full Required on the Maturity Date. Any accrued, unpaid interest, all outstanding principal of any Loan, and all other outstanding Obligations will be finally due and payable on the Maturity Date.

3. PAYMENTS TO LENDER.

3.1 General Procedures. Borrower must make each payment owed by it to Lender under the Loans or Loan Documents in lawful money of the United States of America without set-off, deduction or counterclaim and in immediately available funds. Each such payment must be received by Lender not later than 5:00 p.m., Dallas, Texas time, on the date such payment first becomes due. Any payment received by Lender after such time will be deemed to have been made on the next following Business Day. Should any such payment become due and payable on a day other than a Business Day, the maturity of such payment will be extended to the next succeeding Business Day, and, in the case of a payment of principal or past due interest, interest will accrue and be payable thereon for the period of such extension. Each payment under the Loans or a Loan Document will be payable at the place provided therein and, if no specific place of payment is provided, will be payable at the place of payment of the Convertible Term Note. Lender will apply money or common stock of Borrower received by Lender on account of the Obligations as follows, except as may otherwise be expressly authorized by other Loan Documents:

3.1.1 first, for the payment of all Obligations which are then due (and if such money is insufficient to pay all such Obligations, first to any reimbursements due Lender under other provisions of this Agreement including Section 9.1 and then to the partial payment of all other Obligations then due in proportion to the amounts thereof);

3.1.2 then for the payment of accrued interest or other amounts owing under the Loan Documents (other than principal on the Convertible Term Note), in such order as Lender deems appropriate; and

3.1.3 last for the prepayment of principal on the Convertible Term Note, applied against the outstanding Loans in such order as Lender deems appropriate.

Without limiting the foregoing, all payments or common stock conversions applied to principal or interest on the Convertible Term Note shall be applied first to any interest then due and payable, then to principal then due and payable, then to prepay principal of Loans in such order as Lender deems appropriate.

3.2 Taxes. For the purposes of this Section 3.2, the term "applicable Law" includes FATCA.

3.2.1 *Payments Free of Taxes*. Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then (i) Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, (ii) if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

3.2.2 *Payments of Other Taxes by Borrower*. Without limiting the provisions of subsection 3.2.1 above, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Lender timely reimburse it for the payment of, any Other Taxes.

3.2.3 *Indemnification by Borrower*. Borrower shall indemnify Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error.

3.2.4 *Evidence of Payments*. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 3.2, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

3.2.5 *Survival*. Each party's obligations under this Section 3.2 shall survive any assignment of rights by Lender and the repayment, satisfaction or discharge of all obligations under any Loan Document.

4. CONDITIONS PRECEDENT.

4.1 Initial Loan. The obligation of Lender to fund the Loan hereunder will be subject to the following requirements and conditions:

4.1.1 *Delivery of Documents.* Borrower shall have delivered to Lender the following documents (each after having been duly executed and delivered in form and substance satisfactory to Lender and, with the exception of the Convertible Term Note, all instruments evidencing the Warrants, and the Organizational Documents, each in a sufficient number of originals counterparts that Lender and its counsel may have a fully executed original of each document):

4.1.1.1 this Agreement;

4.1.1.2 the Convertible Term Note;

4.1.1.3 all instruments evidencing the Warrants;

4.1.1.4 the Security Documents;

4.1.1.5 copies of Organizational Documents of each Credit Party and such resolutions, consents, certificates, legal opinions and other evidence as Lender shall request (including certificates, consents and opinions described in any pre-closing document list previously provided to Borrower by Lender or Lender's counsel) to confirm that the Loan Documents have all been duly executed and constitute valid, binding documents, enforceable against each Credit Party in accordance with their respective terms;

4.1.1.6 a certificate of the Secretary or Assistant Secretary or other Authorized Officer of each Credit Party setting forth (i) resolutions of its board of directors or managers authorizing the execution, delivery, and performance of the Loan Documents to which it is a party and identifying the officers authorized to sign such instruments, (ii) specimen signatures of the officers so authorized, and (iii) formation documents of such Credit Party certified by the appropriate Secretary of State as of a recent date, and (iv) other organizational documents of such Credit Party, certified as being accurate and complete;

4.1.1.7 the Initial Financial Statements; and

4.1.1.8 a certificate executed by the president, chief executive officer, chief operating officer, treasurer or chief financial officer of Borrower certifying that true, correct and complete copies of the Initial Financial Statements have been delivered to Lender.

4.1.2 *No Other Encumbrances*. No Person holds any Lien or other charge or encumbrance in, against or to any of the Collateral other than Permitted Liens.

4.1.3 *Closing Certificate.* Borrower has delivered a certificate of an Authorized Officer of Borrower certifying that all the applicable conditions set forth in Sections 4.1 are satisfied.

4.1.4 *Truth of All Representations and Warranties*. The representations and warranties of each Credit Party contained in this Agreement or any Security Document are true and correct on and as of the date of the funding the Loans (other than those representations and warranties which are by their express terms limited to the date of the agreement in which they are initially made).

4.1.5 *No Default*. No Default shall exist on the date of the funding the Loans; nor will any Default result from the Loans or from the applications of the proceeds thereof.

4.1.6 *No Material Adverse Change*. No Material Adverse Change shall have occurred.

4.1.7 *Governmental Requirements*. The making of the Loans shall not be prohibited by any Governmental Requirement.

4.2 Advances Do Not Constitute a Waiver. No disbursement of Loan proceeds by Lender, when Borrower has failed to satisfy any of the conditions in Section 4.1, will preclude Lender from thereafter declaring the failure to be a Default.

5. REPRESENTATIONS AND WARRANTIES BY BORROWER.

Without limiting other representations and warranties made to Lender by Borrower or other Credit Parties, Borrower represents and warrants to Lender as follows, in each case with the understanding that all representations and warranties made to Lender herein or in the other Loan Documents will survive delivery of this Agreement, the Convertible Term Note and the funding of the Loans and that any investigation at any time made by or on behalf of Lender will not diminish the right of Lender to rely upon the following representations and warranties:

5.1 Concerning Credit Parties and the Loan Documents.

5.1.1 *Entity Status*. Each Credit Party is a corporation, limited liability company or limited partnership duly organized, validly existing and, as applicable, in good standing under the laws of the state in which it is organized.

5.1.2 *Authority*. The Organizational Documents of each Credit Party permit the execution, delivery and performance of the Loan Documents by such Credit Party, and all actions and approvals necessary to bind Borrower under the Loan Documents have been taken and obtained. Without limiting the foregoing, each of the Loan Documents will be binding upon Borrower when signed on behalf of Borrower by an Authorized Officer. Borrower has all requisite power and all governmental certificates of authority, licenses, permits and qualifications to carry on its business as now conducted and contemplated to be conducted and to engage in the transactions contemplated by the Loan Documents.

5.1.3 *Solvency*. Each Credit Party is not "Insolvent" on the Closing Date.

5.1.4 *Financial Matters*. Credit Parties has heretofore delivered to Lender true, correct and complete copies of the Initial Financial Statements. The Initial Financial Statements fairly present Borrower's Consolidated financial position at the respective date or dates thereof and the Consolidated results of Borrower's operations for the respective period or periods thereof. Since the date of the annual Initial Financial Statements no Material Adverse Change has occurred, except as reflected in Section 5.1.4 of the Disclosure Schedule. All Initial Financial Statements were prepared in accordance with GAAP. No Credit Party has any outstanding Liabilities of any kind (including contingent obligations, tax assessments, and unusual forward or long-term commitments) which are, in the aggregate, material to Borrower or material with respect to Borrower's Consolidated financial condition and not shown in the Initial Financial Statements or disclosed in Section 5.1.4 of the Disclosure Schedule.

5.1.5 *Pending Legal Proceedings.* Except as disclosed in the Initial Financial Reports or in Section 5.1.5 of the Disclosure Schedule, there are no judicial or administrative investigations, actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting any Credit Party, the adverse determination of which could constitute a Material Adverse Effect, or involving the validity or enforceability or priority of any of the Loan Documents, by or before any court or other Governmental Authority; and no Credit Party is in default with respect to any order, writ, injunction, decree or demand of any court or other Governmental Authority that could have a Material Adverse Effect.

5.1.6 *No Default or Violation*. The execution and performance of the Loan Documents by the Credit Parties does not and will not contravene or result in a breach of or default under any other agreement to which any of the Credit Parties is a party or by which any Property of the Credit Parties is bound. Such execution and performance by the Credit Parties do not contravene any law, order, decree, rule or regulation to which any of the Credit Parties is subject. Further, such execution and performance by the Credit Parties will not result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, the Credit Parties' Property pursuant to the provisions of any such other agreement.

5.1.7 *Enforceability*. The Loan Documents constitute the legal, valid and binding obligations of the Credit Parties enforceable in accordance with their terms, subject to the effect of bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights of creditors generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at Law.

5.1.8 *Approvals*. Without limiting the generality of the foregoing, other than consents and approvals previously obtained and actions previously taken, neither the execution and delivery of the Loan Documents by the Credit Parties, nor the consummation by the Credit Parties of any of the transactions contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration, recording or filing of any document with, or the taking of any other action in respect of, any Governmental Authority which has jurisdiction over the Credit Parties or any of their Property, except for (a) the filing of the UCC financing statements, mortgages and other similar filings to perfect the interest of Lender in the Collateral, and (b) such other consents, approvals, notices, registrations, filings or action as may be required in the ordinary course of the business of the Credit Parties in connection with its performance of its obligations under the Loan Documents.

5.1.9 *Payment of Taxes*. All Tax returns required to be filed by the Credit Parties in any jurisdiction have been filed (or currently effective extensions of time for filing have been obtained) and all material Taxes imposed upon the Credit Parties or upon any of their properties, income or franchises have been paid prior to the time that such Taxes could give rise to a Lien thereon, unless protested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been established on the books of the Credit Parties.

5.1.10 *Principal Office.* The principal office, chief executive office and principal place of business of Borrower is at the notice address set forth for Borrower in Section 11.11.

5.1.11 *ERISA*. Neither Borrower nor any ERISA Affiliate currently maintains, contributes to, is required to contribute to or has any liability, whether absolute or contingent, with respect to any ERISA Plan. With respect to all other employee benefit plans maintained or contributed to by Borrower or any ERISA Affiliate, Borrower or the applicable ERISA Affiliate is in compliance with ERISA, the Tax Code and other applicable Laws with respect to such employee benefit plans. There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits with respect to any employee benefit plan of any Credit Party that could reasonably be expected to have a Material Adverse Change, and there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any employee benefit plan of any Credit Party that has resulted or could reasonably be expected to result in a Material Adverse Change. Neither Borrower nor any other ERISA Affiliate is obligated to provide benefits to any retired employees (or their dependents) under any employee welfare benefits plan (as defined in Section 3(1) of ERISA) other than as required by applicable Law. Neither Borrower nor any other ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

5.1.12 *Subsidiaries*. Borrower does not presently have any Subsidiary or own any stock in any other corporation or association except those (if any) listed in Section 5.1.12 of the Disclosure Schedule. Further, neither Borrower nor any other Credit Party is a member of any general or limited partnership, limited liability company, joint venture or association of any type whatsoever except those (if any) listed in Section 5.1.12 of the Disclosure Schedule. As to any Subsidiaries of Borrower listed in the Disclosure Schedule, Borrower owns, directly or indirectly, the Equity in those Subsidiaries that are indicated in Section 5.1.12 of the Disclosure Schedule.

5.1.13 *Indebtedness*. Neither Borrower nor any other Credit Party has any indebtedness outstanding other than the Indebtedness permitted by Section 7.1.

5.1.14 *Status Under Certain Federal Statutes*. Borrower is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended or (b) subject to federal or state regulation as a utility.

5.1.15 *Environmental Matters.* In the ordinary course of the Credit Parties' business, the Credit Parties carefully consider the effect of Environmental Laws and identify and evaluate potential risks presented to the Credit Parties and their Property because of Environmental Laws. No Credit Party has received any written notice to the effect that its Property or operations fail to comply in any material way with Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which failure to comply or remedial action could reasonably be expected to have a Material Adverse Effect on the business or financial condition of the Credit Parties, taken as a whole, or on the ability of Borrower to perform the Obligations.

5.1.16 *Laws*. Credit Parties are conducting their businesses in material compliance with all applicable Laws, and have, and are in material compliance with, all licenses and permits required under any such Laws.

5.2 Accuracy of Other Statements Made to Lender. No statement made to Lender in the other Loan Documents or in any certificates, consents or legal opinions delivered to Lender by or at the direction or request of Borrower or other Credit Parties in connection with the transactions contemplated in this Agreement or the other Loan Documents (including certificates, consents and opinions described in any pre-closing document list previously provided to Borrower by Lender or Lender's counsel) contains an untrue statement of a material fact or omits a material fact necessary to make the statements contained herein and therein (when taken in their entireties) not misleading.

5.3 Full Disclosure. There is no material fact that Borrower has not disclosed to Lender which could materially adversely affect the properties, business, or financial condition of the Credit Parties (taken as a whole), or which could materially adversely affect the Lender's ability to realize on all or a material portion of the Collateral.

5.4 Title to Properties; Licenses. Each Credit Party has good and defensible title to all of the Collateral owned by it and to all of its other material Properties, free and clear of all Liens, encumbrances, or adverse claims other than Permitted Liens and free and clear of all material impediments to the use of such properties and assets in such Credit Party's business. Each Credit Party possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, and other intellectual property (or otherwise possesses the right to use such intellectual property without violation of the rights of any other Person) which are necessary to carry out its business as presently conducted and as presently proposed to be conducted hereafter, and no Credit Party is in violation in any material respect of the terms under which it possesses such intellectual property or the right to use such intellectual property.

6. AFFIRMATIVE COVENANTS.

Borrower must, and will cause other Credit Parties to, comply with the covenants contained in this Article 6 at all times from the date hereof and for so long as any part of the Obligations is outstanding, except to the extent (if any) such compliance is expressly and specifically waived by Lender from time to time in writing.

6.1 Financial Statements and Reports. Borrower shall furnish to Lender the following, all in form and detail reasonably satisfactory to Lender:

6.1.1 *Fiscal Year End Statements*. Promptly after becoming available, and in any event within 120 days after the close of each Fiscal Year, Borrower's Consolidated balance sheet as of the end of such Fiscal Year, and the related Consolidated statements of income, stockholders' equity and cash flows of Borrower for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, accompanied by the related unqualified report of independent certified public accountants reasonably acceptable to Lender to the effect that such statements have been prepared in accordance with GAAP applied on a basis consistent with prior periods except for such changes in such principles with which the independent public accountants shall have concurred;

6.1.2 *Monthly Statements*. For each calendar month, commencing with the calendar month ending May 31, 2016 until the calendar month ending April 30, 2017, promptly after becoming available, and in any event within 45 days after the end of each such calendar month, including the last calendar month in each Fiscal Year, a Consolidated balance sheet of Borrower as of the end of such calendar month and the related Consolidated statements of income and cash flows of Borrower for such calendar month and the period from the first day of the then current Fiscal Year through the end of such calendar month, certified by the treasurer, chief financial officer or other executive officer of Borrower or of manager of Borrower to have been prepared in accordance with GAAP applied on a basis consistent with prior periods;

6.1.3 *Quarterly Statements*. For each Fiscal Quarter, commencing with the Fiscal Quarter ending June 30, 2017 and for all Fiscal Quarters thereafter, promptly after becoming available, and in any event within 45 days after the end of each such Fiscal Quarter, including the last Fiscal Quarter in each Fiscal Year, a Consolidated balance sheet of Borrower as of the end of such Fiscal Quarter and the related Consolidated statements of income and cash flows of Borrower for such Fiscal Quarter and the period from the first day of the then current Fiscal Year through the end of such Fiscal Quarter, certified by the treasurer, chief financial officer or other executive officer of Borrower or of manager of Borrower to have been prepared in accordance with GAAP applied on a basis consistent with prior periods;

6.1.4 *Officer's Certificates*. Together with each set of monthly statements described in Section 6.1.2, with each set of quarterly statements described in Section 6.1.3 and with each set of annual statements described in Section 6.1.1, a completed Compliance Certificate in the form of **Exhibit B** hereto, executed by the president, chief executive officer, treasurer, or chief financial officer of Borrower;

6.1.5 *Other Reports*. Promptly upon receipt thereof, a copy of each other report submitted to Borrower by independent accountants in connection with any annual, interim or special audit of the books of Borrower; and

6.1.6 *Other Information*. Promptly after receipt of a request from Lender, such other information concerning the business, properties, production, operations or financial condition of any Credit Party as Lender may reasonably request.

6.2 Taxes and Other Liens. Each Credit Party shall pay and discharge promptly all Taxes imposed upon it or upon its income or upon any of its Property as well as all claims of any kind (including claims for labor, materials, supplies and rent); provided, however, each Credit Party shall not be required to pay any such Tax or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings diligently conducted by or on behalf of such Credit Party and if such Credit Party shall have set up reserves therefor adequate under GAAP.

6.3 Maintenance. Each Credit Party shall (a) maintain its corporate existence, rights and franchises; (b) observe and comply in all material respects with all Governmental Requirements (including without limitation ERISA, the Tax Code, and other applicable Laws with respect to employee benefit plans); and (c) maintain its Properties (and any Properties leased by or consigned to it or held under title retention or conditional sales contracts) material to the conduct of its business in good working condition, ordinary wear and tear excepted.

6.4 Guaranties of Borrower's Subsidiaries. Each Subsidiary of Borrower now existing or created, acquired or coming into existence after the date hereof shall, promptly and in any event within 30 days after it has become a Subsidiary of Borrower, execute and deliver to Lender an absolute and unconditional guaranty of the timely repayment of the Obligations and the due and punctual performance of the obligations of Borrower hereunder, which guaranty shall be satisfactory to Lender in form and substance. Each Subsidiary of Borrower existing on the date hereof shall duly execute and deliver such a guaranty prior to the making of any Loan hereunder. Borrower will cause each of its Subsidiaries to deliver to Lender, simultaneously with its delivery of such a guaranty, written evidence satisfactory to Lender and its counsel that such Subsidiary has taken all company action necessary to duly approve and authorize its execution, delivery and performance of such guaranty and any other documents that it is required to execute.

6.5 Further Assurances. Borrower shall, within 10 Business Days after the request of Lender, cure any defects in the execution and delivery of the Convertible Term Note, this Agreement or any of the other Loan Documents and each Credit Party shall, at its expense, promptly execute and deliver to Lender such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of each Credit Party in this Agreement and in the other Loan Documents or to further evidence and more fully describe the collateral intended as security for the Convertible Term Note, as Lender may reasonably request.

6.6 Reimbursement of Expenses. Borrower shall pay (a) all reasonable legal fees incurred by Lender or Warrant Owner in connection with the preparation, negotiation, syndication, execution and delivery of this Agreement, the Convertible Term Note, the Warrants and the other Loan Documents and any amendments, consents or waivers executed in connection therewith, (b) all fees, charges or taxes for the recording or filing of the Security Documents, all reasonable out-of-pocket expenses of Lender or Warrant Owner in connection with the administration of this Agreement, the Convertible Term Note, the Warrants and the other Loan Documents, including reasonable fees for inspections and audits and courier expenses incurred in connection with the Collateral, (c) all amounts expended, advanced or incurred by Lender or Warrant Owner to satisfy any obligation of Borrower under this Agreement or any of the other Loan Documents or to collect the Convertible Term Note or to enforce performance of the Warrants, or to protect, preserve, exercise or enforce the rights of Lender under this Agreement or any of the other Loan Documents or to collect the Convertible Term Note or to enforce performance of the Warrants, or to protect, preserve, exercise or enforce the rights of Lender or Warrant Owner under this Agreement or any of the other Loan Documents, (d) all reasonable out-of-pocket costs and expenses (including reasonable fees and disbursements of attorneys and other experts employed or retained by such Person) incurred in connection with, arising out of, or in any way related to (i) consulting during a Default with respect to (A) the protection, preservation, exercise or enforcement of any of its rights in, under or related to the Collateral or the Loan Documents or (B) the performance of any of its obligations under or related to the Loan Documents, or (ii) protecting, preserving, exercising or enforcing during a Default any of its rights in, under or related to the Collateral or the Loan Documents, each of (a) through (d) shall include all collateral liquidation costs, court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal or other proceedings), reasonable fees of auditors and accountants, and investigation expenses reasonably incurred by Lender or Warrant Owner in connection with any such matters, together with interest at the post-maturity rate specified in the Convertible Term Note on each item specified in clause (a) through (d) from 30 days after the date of written demand or request for reimbursement until the date of reimbursement.

6.7 Insurance.

6.7.1 *Property Insurance*. Each Credit Party will keep or cause to be kept (at its own expense) insured by financially sound and reputable insurers its Properties (including Collateral) in such amounts, against such risks, in such form and with such financially sound and reputable insurers as shall be reasonably satisfactory to Lender from time to time. Borrower will cause the insurance policies covering any Collateral to be modified or endorsed as necessary to (a) name the appropriate Credit Party and Lender as insured parties thereunder (without any representation or warranty by or obligation upon Lender) as their interests may appear with regard to liability policies, (b) provide for payments of losses to Lender as its interests may appear notwithstanding any action, inaction or breach of representation or warranty by any Credit Party, (c) prevent any expiration, cancellation or significant reduction of the coverage provided by such policies without at least 30 days prior notice to Lender, (d) satisfy any other insurance requirements specified in any applicable Security Document, and (e) provide for coverage against "all risks" including fire, casualty and any other hazards normally insured against, in the amount of the full replacement value (less a reasonably deductible not to exceed amounts customary in the industry for similarly situated businesses and properties) of the Collateral insured.

6.7.2 *Other Insurance*. Each Credit Party shall at all times maintain insurance against its liability for injury to persons or property as shall be reasonably satisfactory to Lender from time to time, which insurance shall be by financially sound and reputable insurers.

6.7.3 *Other Requirements*. Each Credit Party will, if so requested by Lender, deliver to Lender original or duplicate policies of the insurance required by this Agreement and, as often as Lender may reasonably request, a report of a reputable insurance broker attesting to the satisfaction of these insurance requirements. Upon and during the continuance of an Event of Default, Lender is hereby authorized to enforce payment under all such insurance policies maintained by any Credit Party with respect to the Collateral and to compromise and settle any claims thereunder, in its own name or in the name of one or more Credit Parties.

6.7.4 *Failure of Borrower to Obtain Insurance.* If Borrower fails to obtain any insurance or to provide confirmation of the insurance as required by this Agreement or the other Loan Documents, Lender will be entitled, but not required, to obtain the insurance and, without limiting Lender's other remedies under the circumstances, Lender may require Borrower to reimburse Lender for any cost of the insurance and to pay interest on the cost computed at the Default Rate from the date the cost was paid by Lender until the date it is reimbursed by Borrower.

6.8 Accounts and Records. Each Credit Party shall keep books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities, in accordance with GAAP. Each Credit Party shall maintain and implement administrative and operating procedures and keep and maintain all documents, books, records, computer tapes and other information reasonably necessary or advisable for the performance by each Credit Party of its obligations under this Agreement.

6.9 Other Information and Inspections. Borrower will furnish to Lender any information which Lender may from time to time reasonably request in writing concerning any covenant, provision or condition of the Loan Documents, any Collateral or any matter in connection with the businesses and operations of Borrower or each Credit Party. Each Credit Party will permit representatives appointed by Lender (including independent accountants, auditors, agents, attorneys, appraisers and any other Persons) to visit and inspect during normal business hours upon reasonable prior notice, any of its property, including its books of account, other books and records, and any facilities or other business assets, and to make extra copies therefrom and photocopies and photographs thereof, and to write down and record any information such representatives obtain, and will permit Lender or its representatives to investigate and verify the accuracy of the information furnished to Lender in connection with the Loan Documents and to discuss all such matters with its officers, employees and representatives to the extent Lender reasonably deems necessary in relation to the Collateral and this Agreement; provided, however, that while no Event of Default exists, no more than four such visits or inspections shall be conducted during any Fiscal Year.

6.10 Notice of Default and Certain Other Events. Borrower will promptly notify Lender upon (a) the occurrence of any Default or Material Adverse Change; (b) the commencement of or any determination made in any legal or regulatory proceeding that involves a Credit Party and that, if concluded adversely to such Credit Party or upheld, could have a Material Adverse Effect; or (c) receipt of any written notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of any Credit Party in excess of the Threshold Amount with respect to any claimed default or any acceleration or threat of acceleration of such Indebtedness. Further, with each such notice to Lender, Borrower will include a detailed statement by a responsible officer of Borrower describing in reasonable detail, to the knowledge of Borrower, the nature and reasons for the events or circumstances that caused such notice to be required and what action Borrower is taking or proposes to take with respect thereto.

6.11 Compliance with Loan Documents. Each Credit Party shall promptly comply with any and all covenants and provisions of this Agreement, the Convertible Term Note and the other Loan Documents to be complied with by such Credit Party.

6.12 Operations and Properties. Each Credit Party must comply with all material Laws, regulations and guidelines applicable to it.

6.13 Environmental Matters.

6.13.1 *Compliance With Environmental Laws.* Each Credit Party will comply in all material respects with all Environmental Laws now or hereafter applicable to such Credit Party and shall obtain, at or prior to the time required by applicable Environmental Laws, all environmental, health and safety permits, licenses and other authorizations necessary for its operations and will maintain such authorizations in full force and effect.

6.13.2 *Notice of Environmental Problem.* Borrower will promptly furnish to Lender all written notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings received by Borrower, or of which it has notice, pending or threatened in writing against Borrower, by any Governmental Authority with respect to any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations in connection with its ownership or use of its properties or the operation of its business.

6.14 Reno Plant Permits. By January 9, 2017, the Credit Parties shall have obtained all governmental certificates of authority, licenses, permits and qualifications necessary for the operation of the Reno Plant.

7. NEGATIVE COVENANTS.

Borrower must, and will cause other Credit Parties to, comply with the covenants contained in this Article 7 at all times from the date hereof and for so long as any part of the Obligations is outstanding, except to the extent (if any) such compliance is expressly and specifically waived by Lender from time to time in writing.

7.1 Indebtedness. No Credit Party will in any manner owe or be liable for Indebtedness except:

7.1.1 the Obligations;

7.1.2 obligations under arms-length operating leases entered into the ordinary course of such Credit Party's business with lessors who are not Affiliates of Borrower or are Credit Parties;

7.1.3 trade payables and other short term liabilities incurred in the ordinary course of such Credit Party's business in arm's length transactions with other Credit Parties or with parties who are not Affiliates of Borrower, which are not greater than ninety (90) days past the date of invoice or delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

7.1.4 Indebtedness owed by such Credit Party to another Credit Party which is subordinated to the Obligations upon terms and conditions satisfactory to Lender in its sole and absolute discretion;

7.1.5 Indebtedness owed by Credit Parties to Green Bank, N.A. in connection with the Loan Agreement between GREEN BANK, N.A. and AQUA METALS RENO, INC. dated November 3, 2015, provided that the principal amount of such Indebtedness does not exceed $10,000,000;

7.1.6 Indebtedness outstanding on the date hereof and listed on Section 7.1.6 of the Disclosure Schedule and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension;

7.1.7 Indebtedness of such Credit Party with respect to surety, appeal, indemnity, performance, or other similar bonds incurred in the ordinary course of business;

7.1.8 Indebtedness owing to any Person providing property, casualty, liability or other insurance to Credit Parties, so long as the amount of such Indebtedness does not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

7.1.9 Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, or purchase cards (including so-called "procurement cards" or "P-cards");

7.1.10 Indebtedness arising from endorsement of instruments or other payment items for deposit; and

7.1.11 other Indebtedness not described in the preceding Sections 7.1.1 through Section 7.1.10 which do not in the aggregate (taking into account all such Indebtedness of all Credit Parties) exceed the Threshold at any one time outstanding.

7.2 Liens. No Credit Party shall grant, create, incur, assume, permit or suffer to exist any Lien upon any of the Collateral other than Permitted Liens.

7.3 Contingent Liabilities. Each Credit Party will not directly or indirectly make, create, incur, assume, permit to exist, increase, renew or extend any Guaranty Obligation other than (a) any guaranty of Indebtedness owed to Lender, (b) Guaranty Obligations of the permitted Indebtedness described in Section 7.1, and (b) the continuation of any existing guaranties listed in Section 7.3 of the Disclosure Schedule.

7.4 Limitation on Mergers. No Credit Party will merge or consolidate with or into any other Person except (a) that any Subsidiary of Borrower may be merged into or consolidated with another Subsidiary of Borrower, so long as the surviving business entity assumes and remains bound by any guaranty of the Obligations and Security Documents executed by either Subsidiary, or (b) Borrower may merge with another Person so long as Borrower is the surviving business entity.

7.5 Limitation on Sales of Property. No Credit Party will sell, transfer, lease, exchange, alienate or dispose of any of its material assets or properties that are Collateral or any material interest therein, except, to the extent not otherwise forbidden under the Security Documents:

7.5.1 equipment which is worthless or obsolete or which is replaced by equipment of equal suitability and value;

7.5.2 inventory which is sold in the ordinary course of business on ordinary trade terms;

7.5.3 capital stock of any of Borrower's Subsidiaries which is transferred to Borrower or a wholly owned Subsidiary of Borrower; and

7.5.4 licenses of Borrower's intellectual property and proprietary rights.

7.6 Limitation on Distributions and Redemptions. Without the written consent of Lender, no Credit Party will declare or make any Distribution.

7.7 Limitation on Investments and New Businesses. No Credit Party will (a) engage directly or indirectly in any business or conduct any operations except in connection with or incidental to its present businesses and operations or (b) make any acquisitions of or capital contributions to or other Investments in any Person or property, other than Permitted Investments.

7.8 Limitation on Extensions of Credit. Except for Permitted Investments, no Credit Party will extend credit, make advances or make loans other than normal and prudent extensions of credit to customers buying goods and services in the ordinary course of business, which extensions shall not be for longer periods than those extended by similar businesses operated in a normal and prudent manner.

7.9 Transactions with Affiliates. Other than as disclosed in Section 7.9 of the Disclosure Schedule, no Credit Party will engage in any material transaction with any of its Affiliates on terms which are less favorable to it than those which would have been obtainable at the time in arm's-length dealing with Persons other than such Affiliates, provided that such restriction shall not apply to transactions involving only Borrower and its wholly owned Subsidiaries.

7.10 Other Agreements. No Credit Party will enter into or otherwise become bound by any agreement other than the Loan Documents that prohibits or limits the amount of dividends, distributions, or loans that it may receive or make or that prohibit it or any other Credit Party from granting Liens on any of its assets to Lender.

7.11 Fiscal Year, Method of Accounting. No Credit Party shall change its Fiscal Year or make any material change in its method of accounting.

7.12 ERISA Plans. No Credit Party shall adopt or agree to maintain or contribute to or participate in any ERISA Plan. No ERISA Affiliate will incur any obligation to contribute to any Multiemployer Plan or any plan subject to Section 4064 of ERISA. Borrower shall promptly notify Lender in writing in the event any ERISA Affiliate adopts or elects to participate in an ERISA Plan.

7.13 Change of Principal Office. No Credit Party shall move its principal office, executive office or principal place of business from the address set forth in Section 11.11.2 without prior written notice to Lender.

7.14 Hedging Contracts. No Credit Party will be a party to or in any manner be liable on any Hedging Contract except for Hedging Contracts that are entered into by such Credit Party in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets or property held or reasonably anticipated by such Credit Party, and not for purposes of speculation or taking a "market view".

8. EVENTS OF DEFAULT.

8.1 Nature of Event. An Event of Default shall exist if any one or more of the following occurs:

8.1.1 *Monetary Default*. Borrower fails to make any payment of principal of or interest on the Convertible Term Note, or payment of any fee, expense or other amount due hereunder, under the Convertible Term Note, or under any other Loan Document, on or before the date such payment is due.

8.1.2 *Breach of Covenants in Article 7*. Default is made in the due observance or performance by any Credit Party of any covenant set forth in Article 7 of this Agreement.

8.1.3 *Breach of Other Provisions of This Agreement*. Default is made in the due observance or performance by any Credit Party of any of the covenants or agreements contained in this Agreement other than those described in subsection 8.1.1 or subsection 8.1.2 and such default continues unremedied for a period of 30 days after notice thereof is given by Lender to Borrower.

8.1.4 *Breach of Other Loan Documents*. Any Credit Party defaults in the due observance or performance of any of the covenants or agreements contained in any other Loan Document to which it is a party, and (unless such default otherwise constitutes a Default pursuant to other provisions of this Section 8.1) such default continues unremedied beyond the expiration of any applicable grace period which may be expressly allowed under such other Loan Document.

8.1.5 *Material Misrepresentation*. Any material statement, warranty or representation by or on behalf of any Credit Party contained in this Agreement, the Convertible Term Note or any other Loan Document to which it is a party, or in any officer's certificate or other writing furnished in connection with this Agreement, proves to have been incorrect or misleading in any material respect as of the date made or deemed made.

8.1.6 *Institution of Certain Legal Proceedings.* Any Credit Party:

8.1.6.1 suffers the entry against it of a judgment, decree or order for relief by a court of competent jurisdiction in an involuntary proceeding commenced under any applicable bankruptcy, insolvency or other similar Law of any jurisdiction now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended, or has any such proceeding commenced against it which remains undismissed for a period of 60 days; or

8.1.6.2 commences a voluntary case under any applicable bankruptcy, insolvency or similar Law now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended; or applies for or consents to the entry of an order for relief in an involuntary case under any such Law; or makes a general assignment for the benefit of creditors; or fails generally to pay (or admits in writing its inability to pay) its debts as such debts become due; or takes corporate or other action to authorize any of the foregoing; or

8.1.6.3 suffers the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of all or a substantial part of its assets or of any part of the Collateral in a proceeding brought against or initiated by it, and such appointment or taking possession is neither made ineffective nor discharged within 60 days after the making thereof, or such appointment or taking possession is at any time consented to, requested by, or acquiesced to by it; or

8.1.6.4 suffers the entry against it of a final judgment for the payment of money in excess of the Threshold Amount (not covered by insurance satisfactory to Lender in its reasonable discretion), unless the same is discharged within 30 days after the date of entry thereof or an appeal or appropriate proceeding for review thereof is taken within such period and a stay of execution pending such appeal is obtained; or

8.1.6.5 suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial part of its assets or any part of the Collateral.

8.1.7 *Cross Default to Other Indebtedness*. Any Credit Party fails to make when due or within any applicable grace period any payment on any Indebtedness (other than the Obligations) with an unpaid principal balance greater than the Threshold Amount; or any event or condition occurs under any provision contained in any agreement under which such Indebtedness is governed, evidenced or secured (or any other material breach or default under such obligation or agreement occurs) if the effect thereof is to cause or permit the holder or trustee of such obligation to cause such obligation to become due prior to its stated maturity; or any such obligation becomes due (other than by regularly scheduled payments) prior to its stated maturity; or any of the foregoing occurs with respect to any one or more items of Indebtedness of any Credit Party with unpaid principal balances exceeding, in the aggregate, the Threshold Amount.

8.1.8 *Impairment of Loan Documents*. This Agreement, the Convertible Term Note, or any other Loan Document shall for any reason cease to be in full force and effect, or be declared null and void or unenforceable in whole or in part as the result of any action initiated by any Person other than Lender; or the validity or enforceability of any such document shall be challenged or denied by any Credit Party other than by reason of illegality.

8.1.9 *Change of Control.* A Change of Control occurs.

8.1.10 *Impairment of Liens*. Any Lien granted pursuant to the Security Documents shall for any reason cease to be in full force and effect, or be declared null and void or unenforceable in whole or in part as the result of any action initiated by any Person other than Lender; or the validity or enforceability of any such Lien shall be challenged or denied by any Credit Party other than by reason of illegality.

8.2 Acceleration. Upon the occurrence and during the continuance of an Event of Default, Lender may declare the entire principal and all interest accrued on the Convertible Term Note to be, and the Convertible Term Note, together with all Obligations, shall thereupon become, forthwith due and payable, without any presentment, demand, protest, notice of protest and nonpayment, notice of acceleration or of intent to accelerate or other notice of any kind, all of which hereby are expressly waived. Notwithstanding the foregoing, if an Event of Default specified in subsections 8.1.6.1, 8.1.6.2 or 8.1.6.3 occurs with respect to Borrower, the Convertible Term Note and all other Obligations shall become automatically and immediately due and payable, both as to principal and interest, without any action by Lender and without presentment, demand, protest, notice of protest and nonpayment, notice of acceleration or of intent to accelerate, or any other notice of any kind, all of which are hereby expressly waived, anything contained herein, in the Convertible Term Note to the contrary notwithstanding.

8.3 Remedies. Upon the occurrence and during the continuance of any Event of Default, Lender shall at its option be entitled to proceed to exercise any of the following remedies:

8.3.1 Borrower agrees that the occurrence of such Event of Default shall constitute a default and an event of default under each of the Loan Documents, because of which Lender will be entitled (i) to exercise any of the various remedies provided in the Loan Documents, including the acceleration of the indebtedness evidenced by the Convertible Term Note and the foreclosure of the lien and security interests granted and conveyed by the Security Documents, and (ii) cumulatively to exercise all other rights, options and privileges provided by Law.

8.3.2 Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, if the Lender is ever a financial institution, Lender shall have the right at any time and from time to time, without notice to Borrower (any such notice being expressly waived), to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other Indebtedness at any time owing by Lender to or for the credit or the account of Borrower, against any and all of the Obligations of Borrower evidenced by the Convertible Term Note, irrespective of whether or not Lender shall have made any demand under this Agreement or the Convertible Term Note and although such Obligations may be unmatured. Lender agrees to notify Borrower promptly after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this subsection are in addition to any other rights and remedies (including other rights of set-off) which Lender may have under other provisions of this Agreement or the other Loan Documents or otherwise.

9. INDEMNITY.

9.1 Agreement to Indemnify. Subject only to the exceptions and qualifications listed in Section 9.2 below:

9.1.1 *Agreement to Indemnify*. Borrower shall pay, reimburse, indemnify, defend, protect and hold harmless Lender and all other Indemnified Parties from and against all Losses asserted against or incurred or suffered by any of them at any time and from time to time by reason of, in connection with, arising out of (directly or indirectly), or in any way related to any of the following:

9.1.1.1 the Loan or any disbursement of the proceeds of the Loan;

9.1.1.2 the negotiation, administration or enforcement of any of the Loan Documents or the exercise of rights or remedies thereunder;

9.1.1.3 any breach by any party other than Lender of any of the Loan Documents or of any other certificates or agreements executed pursuant to or in connection with the Loan Documents;

9.1.1.4 the Collateral;

9.1.1.5 any failure of the Collateral or Borrower itself to comply with applicable Law; and

9.1.1.6 any actual or alleged presence or Release of Hazardous Materials (as such terms are defined in the Stock Purchase Agreement) on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any environmental liability related in any way to Borrower or any of its Subsidiaries.

Borrower's obligations under this Section 9.1 will survive any termination or expiration of this Agreement, and this indemnity shall apply whether or not any Indemnified Party shall also be indemnified as to the applicable Loss by any other Person and whether or not the Loss arises or accrues prior to the Effective Date.

9.1.2 *Due Date for Indemnity Payments*. Any amount to be paid by Borrower under this Section 9.1 shall be due 10 days after a notice requesting such payment is given to Borrower.

9.2 Exceptions and Qualifications to Indemnity. Lender acknowledges and agrees that nothing in the preceding Section 9.1 shall require or be construed to require Borrower to pay or reimburse any Losses incurred or suffered by any Indemnified Party that result from or are proximately caused by (and attributed by any applicable principles of comparative fault to) the Established Misconduct of that Indemnified Party.

10. PROVISION TO SATISFY EXPRESS NEGLIGENCE RULE.

EVERY INDEMNITY AND RELEASE PROVIDED IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS FOR THE BENEFIT OF LENDER OR OTHER INDEMNIFIED PARTIES, INCLUDING THE INDEMNITY SET FORTH IN THE ARTICLE 9, SHALL APPLY EVEN IF AND WHEN THE SUBJECT MATTER OF THE INDEMNITY OR RELEASE ARISES OUT OF OR RESULTS FROM THE ORDINARY NEGLIGENCE OR STRICT LIABILITY, BUT NOT GROSS NEGLIGENCE, OF LENDER OR ANOTHER INDEMNIFIED PARTY.

11. MISCELLANEOUS.

Without limiting the covenants of Borrower in the other Loan Documents, Borrower covenants with Lender as follows:

11.1 Section 346 of the Texas Finance Code. Section 346 of the Texas Finance Code (which regulates certain revolving loan accounts and revolving tri-party accounts) shall not apply to this Agreement or the other Loan Documents.

11.2 Limitation on Interest. Lender, each Credit Party and any other parties to the Loan Documents intend to contract in strict compliance with applicable usury Law from time to time in effect. In furtherance thereof such Persons stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, interest in excess of the maximum amount of interest permitted to be charged by applicable Law from time to time in effect. Neither each Credit Party nor any present or future guarantors, endorsers, or other Persons hereafter becoming liable for payment of any Obligation shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under applicable Law from time to time in effect, and the provisions of this section shall control over all other provisions of the Loan Documents which may be in conflict or apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of any Obligation is accelerated. If (a) the maturity of any Obligation is accelerated for any reason, (b) any Obligation is prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum, or (c) Lender or any other holder of any or all of the Obligations shall otherwise collect moneys which are determined to constitute interest which would otherwise increase the interest on any or all of the Obligations to an amount in excess of that permitted to be charged by applicable Law then in effect, then all such sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of the related Obligations or, at Lender's or such holder's option, promptly returned to each Credit Party or the other payor thereof upon such determination. In determining whether or not the interest paid or payable, under any specific circumstance, exceeds the maximum amount permitted under applicable Law, Lender and each Credit Party (and any other payors thereof) shall to the greatest extent permitted under applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the instruments evidencing the Obligations in accordance with the amounts outstanding from time to time thereunder and the maximum legal rate of interest from time to time in effect under applicable Law in order to lawfully charge the maximum amount of interest permitted under applicable Law. In the event applicable Law provides for an interest ceiling under Section 303 of the Texas Finance Code, that ceiling shall be the weekly ceiling.

11.3 Bank Accounts, Offset. To secure the repayment of the Obligations each Credit Party hereby grants to Lender and to each financial institution which hereafter acquires a participation or other interest in the Loan or the Convertible Term Note (in this section called a "**Participant**") a security interest, a lien, and a right of offset, each of which shall be in addition to all other interests, liens, and rights of Lender or any Participant at common law, under the Loan Documents, or otherwise, and each of which shall be upon and against (a) any and all moneys, securities or other Property (and the proceeds therefrom) of any Credit Party now or hereafter held or received by or in transit to such financial institution Participant from or for the account any Credit Party, whether for safekeeping, custody pledge, transmission, collection or otherwise, (b) any and all deposits (general or special, time or demand, provisional or final) of any Credit Party with such financial institution Participant, and (c) any other credits and claims of any Credit Party at any time existing against such financial institution Participant, including claims under certificates of deposit. Upon the occurrence of any Event of Default, each financial institution Participant is hereby authorized to offset, appropriate, and apply, at any time and from time to time, without prior notice to Borrower, any and all items hereinabove referred to against the Obligations then due and payable.

11.4 Assignments, Participations.

11.4.1 *Assignments*. Lender shall have the right to sell, assign or transfer all or any part of the Convertible Term Note, Loan and rights and the associated rights and Obligations under all Loan Documents to one or more financial institutions or Interstate Group Members, and the assignee, transferee or recipient shall have, to the extent of such sale, assignment, or transfer, the same rights, benefits and obligations of Lender. Within 5 Business Days after any such assignment, the assignee shall notify Borrower of the outstanding principal balance of the Convertible Term Note payable to assignee and Borrower shall execute and deliver to assignee a new Convertible Term Note evidencing such assignee's assigned Loan and, if the assignor Lender has retained a portion of its Loan, replacement Convertible Term Note in the principal amount of the Loan retained by the assignor Lender (such replacement Convertible Term Note to be in exchange for, but not in payment of, the original Convertible Term Note held by such Lender).

11.4.2 *Participations*. Lender shall have the right to grant participations in all or any part of the Convertible Term Note, Loan and the associated rights and obligations under all Loan Documents to one or more financial institutions or Interstate Group Members.

11.4.3 *Distribution of Information.* It is understood and agreed that Lender may provide to assignees and participants and prospective assignees and participants financial information and reports and data concerning Borrower's properties and operations which was provided to Lender pursuant to this Agreement, provided that such assignees and participants agree in writing to keep such information, reports and data confidential in accordance with the same terms as stated in Section 11.6 hereof or such other terms as Borrower may approve in writing in its sole and absolute discretion.

11.5 Assignment by Borrower. Notwithstanding anything to the contrary in this Agreement, Borrower shall have no right to assign its rights under this Agreement or the other Loan Documents or its rights to the proceeds of the Loan without the written consent of Lender, in its sole and absolute discretion, in each case, and any such assignment or purported assignment without consent shall, at Lender's option, relieve Lender from all further obligations hereunder and shall constitute an Event of Default under this Agreement.

11.6 Confidentiality. Lender agrees to keep confidential any information furnished or made available to it by any Credit Party pursuant to any Loan Document, except that nothing herein or in any of the other Loan Documents shall prevent Lender from disclosing such information or any other information (a) to any officer, director, employee, agent, or advisor of Lender or Affiliate of Lender, (b) to any other Person if reasonably incidental to the administration of the credit facility provided herein, (c) as required by any Law; provided that (x) prior to any disclosure under this clause (c), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable Law and (y) any disclosure under this clause (c) shall be limited to the portion of the confidential information as may be required by such Law, (d) upon the order of any administrative agency so long as such administrative agency is informed of the confidential nature of such information, (e) upon the request or demand of any court or tribunal pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (e) the disclosing party agrees to provide Borrower with prior written notice thereof, to the extent that the disclosing party is permitted to provide such prior written notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (e) shall be limited to the portion of the confidential information as may be required by such court or tribunal pursuant to such subpoena or other legal process, (f) that is or becomes available to the public other than as a result of a disclosure by Lender or any Indemnified Party prohibited by this Agreement, (g) in connection with any litigation to which such Lender or any of its Affiliates may be a party involving parties hereto which such litigation involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Credit Party, Lender, any of their respective Affiliates, or their respective counsel) under this clause (g) with respect to litigation involving any Person (other than Borrower, Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior written notice thereof, (h) if (and only to the extent) necessary in connection with the exercise of any secured creditor remedy under this Agreement or any other Loan Document, (i) subject to provisions substantially similar to those contained in this section, to any actual or proposed participant or assignee that is a financial institution or an Interstate Group Member or that has been approved in writing by Borrower, and (j) if the disclosure is authorized by other express provisions of this Agreement or any other Loan Document.

11.7 Termination, Limited Survival. In its sole and absolute discretion Borrower may at any time that no Obligations are owing elect in a notice delivered to Lender to terminate this Agreement. Upon receipt by Lender of such a notice, if no Obligations are then owing, this Agreement and all other Loan Documents shall thereupon be terminated and the parties thereto released from all prospective obligations thereunder. Notwithstanding the foregoing or anything herein to the contrary, any waivers or admissions made by any Person in any Loan Documents, any Obligations, and any obligations which any Person may have to indemnify or compensate Lender shall survive any termination of this Agreement or any other Loan Document. At the request and expense of Borrower, Lender shall prepare and execute all necessary instruments to reflect and effect such termination of such Loan Documents.

11.8 Rights of Third Parties. All conditions to the obligations of Lender under this Agreement, including the obligation to disburse proceeds of Loan, are imposed solely and exclusively for the benefit of Lender and its successors and permitted assigns and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will make disbursements or refuse to make disbursements in the absence of strict compliance with any or all of such condition. Further, no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it desirable to do so.

11.9 Evidence of Satisfaction of Conditions. Any condition of this Agreement which requires the submission of evidence of the existence or nonexistence of a specified fact or facts implies as a condition the existence or nonexistence, as the case may be, of such fact or facts, and Lender shall, at all times, be able to establish to its satisfaction and in its reasonable discretion such existence or nonexistence.

11.10 Conflict with the Term Sheet. This Agreement and the other Loan Documents are intended to supersede the Term Sheet, except to the extent (if any) that other provisions of this Agreement expressly incorporate terms or conditions of the Term Sheet by reference.

11.11 Payments and Notices. Any provision of the Loan Documents or of applicable Law with reference to the sending, mailing or delivery of any notice or demand under this Agreement or with reference to the making of any payment required under the Loan Documents, shall be deemed to be complied with when and if the following steps are taken:

11.11.1 *Manner of Payment.* All payments on the Convertible Term Note and other amounts required to be paid by Borrower to Lender shall be paid to Lender in immediately available funds by wire transfer to the account designated by Lender.

11.11.2 *Notice Requirements.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection 11.11.3 below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

Address of Lender:

INTERSTATE EMERGING INVESTMENTS, LLC
12770 Merit Drive, Suite 1000
Dallas, Texas 75251
Attention: Kelvin F. Sellers
Fax: (972) 455-6051
Email: kelvin.sellers@ibsa.com

Address of Borrower:

AQUA METALS, INC.
1010 Atlantic Avenue
Alameda, California 94501
Attention: Stephen R. Clarke
Email: Steve.Clarke@aquametals.com

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in subsection 11.11.3 below, shall be effective as provided in said subsection 11.11.3. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other party hereto

11.11.3 *Electronic Communications.* Notices and other communications to Lender may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Lender. Lender or Borrower or any other Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

11.12 Other Terms and References.

11.12.1 As used in any of the Loan Documents, a capitalized term that is not defined in such document or in this Agreement, but that is defined in another of the Loan Documents, shall have the meaning ascribed to it in such other document, unless a contrary intent is clear from the context in which such term is used.

11.12.2 Words of any gender used in the Loan Documents shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context otherwise requires.

11.12.3 References in any of the Loan Documents to Paragraphs, subparagraphs, Articles, Sections, subsections or other subdivisions shall refer to the corresponding Paragraphs, subparagraphs, Articles, Sections, subsections or subdivisions of such document, unless specific reference is made to another document or instrument.

11.12.4 References in any of the Loan Documents to any Schedule or Exhibit shall refer to the corresponding Schedule or Exhibit attached to such document, which shall be made a part thereof by such reference.

11.12.5 All capitalized terms used in the Loan Documents which refer to other documents shall be deemed to refer to such other documents as they may be renewed, extended, supplemented, amended or otherwise modified from time to time, provided such documents are not renewed, extended or modified in breach of any provision contained in any of the Loan Documents.

11.12.6 All accounting terms used but not specifically defined in the Loan Documents shall be construed in accordance with GAAP.

11.12.7 The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import when used in any of the Loan Documents refer to such document taken as a whole and not to any particular subdivision thereof unless expressly so limited. The phrases "this Paragraph", "this subparagraph", "this Section", "this subsection" and similar phrases used in the Loan Documents refer only to the Paragraph, subparagraph, Section, subsection or other subdivision described in which the phrase occurs.

11.12.8 As used in the Loan Documents the word "or" is not exclusive.

11.12.9 The word "express" will be construed as if followed by "and unambiguous", and the word "expressly" will be construed as if followed by "and unambiguously".

11.12.10 The words "include", "including" and similar terms shall be construed as if followed by ", without limitation to," and the rule of *ejusdem generis* shall not be applied to limit the generality of a term in any of the Loan Documents when followed by specific examples.

11.13 Severability. If any term or provision of any of the Loan Documents or the application of it shall to any extent be held by a court to be invalid and unenforceable, the remainder of the Loan Documents, or the application of such term or provision other than to the extent to which it is invalid or unenforceable, shall not be affected.

11.14 Paragraph Headings. The paragraph and section headings contained in the Loan Documents are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several provisions hereof.

11.15 Time is of the Essence. Time is of the essence as to all obligations created by and notices required or permitted by the Loan Documents.

11.16 Negotiated Documents. Lender or Borrower and their counsel have reviewed and revised or requested revisions to the Loan Documents, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Loan Documents or any amendments to the Loan Documents.

11.17 No Fiduciary Relationship, Etc. Neither the execution of the Loan Documents nor the administration hereof or of other documents referenced herein, nor any other right, duty or obligation created under or pursuant to the Loan Documents is intended to be or to create any fiduciary relationship between Lender and Borrower.

11.18 Cumulative Rights and Remedies. All rights and remedies of Lender under any of the Loan Documents shall be separate, distinct and cumulative and no single, partial or full exercise of any right or remedy shall exhaust the same or preclude Lender from thereafter exercising in full or in part the same right or remedy or from concurrently or thereafter exercising any other right or remedy which Lender may have under any of the Loan Documents or at Law or in equity, and each and every such right and remedy may be exercised at any time or from time to time as Lender believes to be appropriate in its sole and absolute discretion.

11.19 No Implied Waiver. The failure of Lender to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in the Loan Documents shall not be construed as a waiver or a relinquishment of such option, right, power or remedy for the future. The waiver of or redress for any breach of the Loan Documents by Borrower shall not prevent a similar subsequent act from constituting a breach. Any express waiver by Lender of any provision of the Loan Documents shall affect only the term or condition specified in such waiver and only for the time and in the manner specifically stated in such waiver. No waiver by Lender of any provision of the Loan Documents shall be effective unless expressed in writing and signed by the Person to be bound by the waiver. A receipt by Lender of any payment with knowledge of a breach by Borrower of any provision of the Loan Documents shall not constitute a waiver of the breach.

11.20 Entire and Only Agreement; No Oral Amendments. The Loan Documents supersede any prior negotiations and agreements between Lender and Borrower concerning the Property, and no amendment, release or termination of any of the Loan Documents shall be binding or valid unless expressed in a writing executed by all parties to be bound by such amendment, release or termination.

11.21 Binding Effect Upon Successors and Assigns. Whether or not so expressed, whenever a party to any of the Agreement is named or referenced in this Agreement, the successors and permitted assigns of such party shall be included, and all covenants and agreements contained in this Agreement by or on behalf of Borrower or Lender shall bind and inure to the benefit of their respective successors and permitted assigns.

11.22 Governing Law. EXCEPT TO THE EXTENT THAT THE LAW OF ANOTHER JURISDICTION IS EXPRESSLY ELECTED IN A LOAN DOCUMENT, THIS AGREEMENT, THE CONVERTIBLE TERM NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND THE FEDERAL LAWS OF THE UNITED STATES APPLICABLE WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OR CHOICE OF LAW RULES THAT MIGHT REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

11.23 Agreement to Jurisdiction and Methods of Service of Process.

11.23.1 Each of Lender and Borrower irrevocably submits to the jurisdiction of any Texas or federal court sitting in Dallas County, Texas over any suit or proceeding arising out of or relating to this Agreement or any of the other Loan Documents, and both Lender and Borrower waives and agrees not to assert, by way of motion, as a defense or otherwise, that any such suit or proceeding brought in a court in Dallas County, Texas is brought in an inconvenient forum or that the venue thereof is improper. Nothing herein or in any other Loan Document shall affect any right that Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

11.23.2 Further, each of Lender and Borrower agrees and consents that service of process may be made upon it in any legal proceeding relating to this Agreement or any of the other Loan Documents by any means allowed under Texas or federal Law. In addition to other permitted methods of service of process, unless disallowed by Texas or federal Law, service of process upon Lender or Borrower in any such proceeding may be made by certified or registered mail, return receipt requested, directed to Lender or Borrower, as the case may be, at the notice address specified in this Section, and service so made shall be complete 5 days after the same shall have been so mailed.

11.23.3 Nothing in this Section shall affect the right of Lender or Borrower to serve legal process in any other manner permitted by Law or affect the right of Lender or Borrower to bring any action or proceeding against the other party or its property in the courts of any other jurisdiction or jurisdictions.

11.24 Execution in Counterparts; Delivery by Fax. To facilitate execution, each of the Loan Documents may be executed in multiple identical counterparts. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts, taken together, shall collectively constitute a single instrument. But it shall not be necessary in making proof of any of the Loan Documents to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties to such document. Any signature page may be detached from one counterpart and then attached to a second counterpart with identical provisions without impairing the legal effect of the signatures on the signature page. Signing and sending a counterpart (or a signature page detached from the counterpart) by facsimile or other electronic means to another party will have the same legal effect as signing and delivering an original counterpart to the other party. A copy (including a copy produced by facsimile or other electronic means) of any signature page that has been signed by or on behalf of a party to any of the Loan Documents shall be as effective as the original signature page for the purpose of proving such party's this Agreement to be bound.

11.25 Waiver of Rights to Trial by Jury. **BY ITS EXECUTION OF THIS AGREEMENT, EACH OF BORROWER AND LENDER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS OR ANY OF THEM OR ANY OTHER DOCUMENT OR DEALINGS BETWEEN THEM RELATING TO THE LOAN OR THE PROPERTY.** The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. This waiver is a material inducement to each of Borrower and Lender as they enter into a business relationship; each has already relied on the waiver in entering into the Loan Documents; and each will continue to rely on the waiver in their related future dealings. Borrower and Lender, each having reviewed this waiver with its legal counsel, knowingly and voluntarily waives its jury trial rights following consultation with legal counsel**. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO EACH OF THE LOAN DOCUMENTS.** In the event of litigation, this Agreement may be filed as a written consent to a trial by before a judge sitting without a jury.

11.26 Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan, or the use of the proceeds thereof. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

[Signature pages follow.]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

INTERSTATE EMERGING INVESTMENTS, LLC, as Lender

By: INTERSTATE BATTERIES, INC.,
its sole member

By: /s/ William McDade
Name: William McDade
Title: CFO

AQUA METALS, INC., as Borrower

By: /s/ Stephen R. Clarke
Name: Stephen R. Clarke
Title: CEO

Exhibit A

Form of Convertible Term Note

CONVERTIBLE TERM NOTE

$5,000,000.00 Dallas, Texas [____ __], 2016

FOR VALUE RECEIVED, the undersigned, AQUA METALS, INC., a Delaware corporation (herein called "**Borrower**"), hereby promises to pay to INTERSTATE EMERGING INVESTMENTS, LLC or its permitted assigns (herein called "**Lender**"), the principal sum of FIVE MILLION AND 00/100 Dollars ($5,000,000.00), together with interest on the unpaid principal balance thereof as hereinafter set forth, both principal and interest payable as herein provided in lawful money of the United States of America at the offices of Lender under the Credit Agreement, or at such other place as from time to time may be designated by the holder of this Convertible Term Note.

This Convertible Term Note (a) is issued and delivered under that certain Credit Agreement dated as of May 18, 2016 among Borrower and Lender (herein, as from time to time supplemented, amended or restated, called the "**Credit Agreement**"), and is a "**Convertible Term Note**" as defined therein, (b) is subject to the terms and provisions of the Credit Agreement, which contains provisions for payments and prepayments hereunder, conversion of principal and interest hereunder into common stock of Borrower, and acceleration of the maturity hereof upon the happening of certain stated events, and (c) is secured by and entitled to the benefits of certain Security Documents (as identified and defined in the Credit Agreement). Payments on this Convertible Term Note shall be made and applied as provided herein and in the Credit Agreement. Reference is hereby made to the Credit Agreement for a description of certain rights, limitations of rights, obligations and duties of the parties hereto and for the meanings assigned to terms used and not defined herein and to the Security Documents for a description of the nature and extent of the security thereby provided and the rights of the parties thereto.

Unless earlier converted into common stock of Borrower, the principal amount of this Convertible Term Note, together with all interest accrued hereon, shall be due and payable in full on the Maturity Date and otherwise as provided in the Credit Agreement. Interest on this Convertible Term Note shall be payable as provided in the Credit Agreement.

Notwithstanding the foregoing paragraph and all other provisions of this Convertible Term Note, in no event shall the interest payable hereon, whether before or after maturity, exceed the maximum amount of interest which, under applicable Law, may be contracted for, charged, or received on this Convertible Term Note, and this Convertible Term Note is expressly made subject to the provisions of the Credit Agreement which more fully set out the limitations on how interest accrues hereon. In the event applicable Law provides for an interest ceiling under Chapter 303 of the Texas Finance Code (the "**Texas Finance Code**") as amended, for that day, the ceiling shall be the "weekly ceiling" as defined in the Texas Finance Code and shall be used in this Convertible Term Note for calculating the Maximum Rate and for all other purposes. The term "applicable law" as used in this Convertible Term Note shall mean the Laws of the State of Texas or the Laws of the United States, whichever Laws allow the greater interest, as such Laws now exist or may be changed or amended or come into effect in the future.

If this Convertible Term Note is placed in the hands of an attorney for collection after default, or if all or any part of the indebtedness represented hereby is proved, established or collected in any court or in any bankruptcy, receivership, debtor relief, probate or other court proceedings, Borrower and all endorsers, sureties and guarantors of this Convertible Term Note jointly and severally agree to pay reasonable attorneys' fees and collection costs to the holder hereof in addition to the principal and interest payable hereunder.

Borrower and all endorsers, sureties and guarantors of this Convertible Term Note hereby severally waive demand, presentment, notice of demand and of dishonor and nonpayment of this Convertible Term Note, protest, notice of protest, notice of intention to accelerate the maturity of this Convertible Term Note, declaration or notice of acceleration of the maturity of this Convertible Term Note, diligence in collecting, the bringing of any suit against any party and any notice of or defense on account of any extensions, renewals, partial payments or changes in any manner of or in this Convertible Term Note or in any of its terms, provisions and covenants, or any releases or substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

This Convertible Term Note and the rights and duties of the parties hereto shall be governed by the Laws of the State of Texas (without regard to principles of conflicts of law), except to the extent the same are governed by applicable federal Law.

THIS CONVERTIBLE TERM NOTE IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN INTERCREDITOR AGREEMENT BETWEEN LENDER AND GREEN BANK, N.A. DATED AS OF THE DATE HEREOF.

AQUA METALS, INC.

By: _____

Name:
Title:

Exhibit B

Form of Compliance Certificate

COMPLIANCE CERTIFICATE

Reference is made to that certain Credit Agreement dated as of May 18, 2016 (as amended or supplemented, the "**Credit Agreement**"), by and between AQUA METALS, INC. (" **Borrower**"), a Delaware corporation, and INTERSTATE EMERGING INVESTMENTS, LLC ("**Lender**"), which Credit Agreement is in full force and effect on the date hereof. Terms that are defined in the Credit Agreement are used herein with the meanings given them in the Credit Agreement.

This Certificate is furnished pursuant to Section 6.1.4 of the Agreement. Together herewith Borrower is furnishing to Lender, Borrower's *[audited/unaudited] financial statements (the "**Financial Statements**") as at _____ (the "**Reporting Date**"). Borrower hereby represents, warrants, and acknowledges to Lender that:

(a) the officer of Borrower signing this instrument is the duly elected, qualified and acting _____ of Borrower and as such is Borrower's [president/chief executive officer/ treasurer/chief financial officer];

(b) the Financial Statements have been prepared in accordance with GAAP and present fairly [subject to year-end adjustments and the absence of footnotes] the financial position of Borrower on a Consolidated basis;

(c) on the Reporting Date Borrower was, and on the date hereof Borrower is, in full compliance with the disclosure requirements of Section 6.10 of the Credit Agreement, and no Default otherwise existed on the Reporting Date or otherwise exists on the date of this instrument *[except for Default(s) under Section(s) _____ of the Agreement, which *[is/are] more fully described on a schedule attached hereto]; and

(d) *[unless otherwise disclosed on a schedule attached hereto,] the representations and warranties of the Credit Parties set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualifiers contained therein) on and as of the date hereof, with the same effect as though such representations and warranties had been made on and as of the date hereof, except for any such representation or warranty that expressly applies to a specified earlier date, in which case such representation or warranty shall have been true and correct in all material respects (without duplication of any materiality qualifiers contained therein) on and as of such earlier date.

The officer of Borrower signing this instrument hereby certifies that he has reviewed the Loan Documents and the Financial Statements and has otherwise undertaken such inquiry as is in his/her opinion necessary to enable him/her to express an informed opinion with respect to the above representations, warranties and acknowledgments of Borrower and, to the best of his/her knowledge, such representations, warranties, and acknowledgments are true, correct and complete.

IN WITNESS WHEREOF, this instrument is executed as of _____, 20__.

AQUA METALS, INC.

By: _____

Name:
Title:

DISCLOSURE SCHEDULE

These Disclosure Schedules are made and given pursuant to the Credit Agreement dated as of May 18, 2016 (the "**Agreement**"), between Aqua Metals, Inc. (the "**Company**") and Interstate Battery System International, Inc. ("**Lender**"). All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement. The section numbers below correspond to the section numbers in the Agreement, and the disclosures in any section or subsection of these Disclosure Schedules shall qualify other sections and subsections to the extent such disclosure is apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

Nothing in these Disclosure Schedules is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in these Disclosure Schedules (1) does not represent a determination that such item is material or establish a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, (3) does not represent a determination that the transactions contemplated by the Agreement require the consent of third parties, and (4) shall not constitute, or be deemed to be, an admission to any third party concerning such item. These Disclosure Schedule include brief descriptions or summaries of certain agreements and instruments, copies of all which have been made available to Purchaser. Such descriptions do not purport to be comprehensive, and are qualified in their entirety by reference to the text of the documents described, true and complete copies of which have been made available to Lender.

5.1.4 Financial Matters

The Company continues to make material capital expenditures in connection with the development of its recycling facility in McCarran, Nevada and the construction of its recycling modules.

The Company is negotiating a running change to the Contract for Construction dated September 22, 2015 between Aqua Metals, Reno, Inc. and Miles Construction.

5.1.5 Pending Legal Proceedings

None.

5.1.12 Subsidiaries

The subsidiaries of the Company are Aqua Metals Operations, Inc., a Delaware corporation, and Aqua Metals Reno, Inc., a Delaware corporation.

7.1.6 Indebtedness

Aqua Metals Reno, Inc. has entered into a Loan Agreement ("Green Bank Loan") with Green Bank, N.A. pursuant to which Green Bank provided Aqua Metals Reno, Inc. with a loan in the amount of $10 million.

Various equipment leases with Thermal Fischer Scientific

7.3 Contingencies

The Green bank Loan has been guaranteed by Borrower and Aqua Metals Reno, Inc.

7.9 Transactions with Affiliates

None.

Disclosure Schedule

SECURITY SCHEDULE

1. Guaranty by each Guarantor in favor of Lender dated as of the Closing Date.

2. Security Agreement by AMR in favor of Lender dated as of the Closing Date.

3. Deed of Trust, Security Agreement and Fixture Filing from AMR for the benefit of Lender dated as of the Closing Date.

4. Intercreditor Agreement between Lender and GREEN BANK, N.A. dated as of the Closing Date.

Exhibit 10.6

AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT ("**Amendment**") is entered into as of August 8, 2016, to be effective as of July 1, 2016, by and between Aqua Metals, Inc., a Delaware corporation ("***Company***"), and Stephen R. Clarke ("***Executive***").

RECITAL

A. The parties hereto have previously entered into that certain Executive Employment Agreement dated January 15, 2015 (the "***Employment Agreement***").

B. The parties hereto desire to amend the Employment Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties agree as follows:

1. Section 4.1 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.1:

> **"4.1 Salary.** The Employee will be paid an annual salary of Four Hundred Ten Thousand Dollars ($410,000). Salary shall be paid on a semi-monthly basis as adjusted from time to time. During employment, the Company will pay Employee the annual base salary in accordance with the terms of the Employee Manual less state and federal withholding and authorized deductions.**"**

2. Section 4.5 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.5:

> "**4.5 Severance on Termination Without Cause Or For Good Reason** . If the Company terminates the Employee for any reason without Cause (including death or Disability) or Employee resigns from the Company for Good Reason, the Employee shall be entitled to (i) a severance payment of two year's annual salary at the greater of the salary rate effective on the date of termination or the salary rate of $410,000; and (ii) the cost or value of two year's benefits including, without limitation, the cost of all insurance premiums and all other benefits in effect on the date of termination for which the Employee is eligible, less all federal and state withholding. The receipt of any severance or other benefits pursuant to this Section will be subject to Employee signing, and not revoking, a customary separation agreement and release of claims in a form acceptable to the Company in its reasonable discretion. No severance or other benefits will be paid or provided until the separation agreement and release agreement becomes effective."

3. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Except as set forth in this Amendment, all other provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first written above.

"**Company"**

Aqua Metals, Inc.,
a Delaware corporation

By: */s/ Thomas Murphy*
Thomas Murphy,
Chief Financial Officer

"**Executive"**

/s/ Stephen R. Clarke
Stephen R. Clarke

Exhibit 10.7

AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT ("**Amendment**") is entered into as of August 8, 2016, to be effective as of July 1, 2016, by and between Aqua Metals, Inc., a Delaware corporation ("***Company***"), and Thomas Murphy ("***Executive***").

RECITAL

A. The parties hereto have previously entered into that certain Executive Employment Agreement dated January 15, 2015 (the "***Employment Agreement***").

B. The parties hereto desire to amend the Employment Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties agree as follows:

1. Section 4.1 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.1:

> **"4.1 Salary.** The Employee will be paid an annual salary of Three Hundred Eighty Thousand Dollars ($380,000). Salary shall be paid on a semi-monthly basis as adjusted from time to time. During employment, the Company will pay Employee the annual base salary in accordance with the terms of the Employee Manual less state and federal withholding and authorized deductions.**"**

2. Section 4.5 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.5:

> "**4.5 Severance on Termination Without Cause Or For Good Reason** . If the Company terminates the Employee for any reason without Cause (including death or Disability) or Employee resigns from the Company for Good Reason, the Employee shall be entitled to (i) a severance payment of two year's annual salary at the greater of the salary rate effective on the date of termination or the salary rate of $380,000; and (ii) the cost or value of two year's benefits including, without limitation, the cost of all insurance premiums and all other benefits in effect on the date of termination for which the Employee is eligible, less all federal and state withholding. The receipt of any severance or other benefits pursuant to this Section will be subject to Employee signing, and not revoking, a customary separation agreement and release of claims in a form acceptable to the Company in its reasonable discretion. No severance or other benefits will be paid or provided until the separation agreement and release agreement becomes effective."

3. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Except as set forth in this Amendment, all other provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first written above.

"**Company"**

Aqua Metals, Inc.,
a Delaware corporation

By: */s/Stephen R. Clarke*
Stephen R. Clarke,
Chief Executive Officer

"**Executive"**

/s/ Thomas Murphy
Thomas Murphy

Exhibit 10.8

AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT ("**Amendment**") is entered into as of August 8, 2016, to be effective as of July 1, 2016, by and between Aqua Metals, Inc., a Delaware corporation ("***Company***"), and Selwyn Mould ("***Executive***").

RECITAL

A. The parties hereto have previously entered into that certain Executive Employment Agreement dated January 15, 2015 (the "***Employment Agreement***").

B. The parties hereto desire to amend the Employment Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties agree as follows:

1. Section 4.1 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.1:

> **"4.1 Salary.** The Employee will be paid an annual salary of Four Hundred Thousand Dollars ($400,000). Salary shall be paid on a semi-monthly basis as adjusted from time to time. During employment, the Company will pay Employee the annual base salary in accordance with the terms of the Employee Manual less state and federal withholding and authorized deductions.**"**

2. Section 4.5 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.5:

> "**4.5 Severance on Termination Without Cause Or For Good Reason** . If the Company terminates the Employee for any reason without Cause (including death or Disability) or Employee resigns from the Company for Good Reason, the Employee shall be entitled to (i) a severance payment of two year's annual salary at the greater of the salary rate effective on the date of termination or the salary rate of $400,000; and (ii) the cost or value of two year's benefits including, without limitation, the cost of all insurance premiums and all other benefits in effect on the date of termination for which the Employee is eligible, less all federal and state withholding. The receipt of any severance or other benefits pursuant to this Section will be subject to Employee signing, and not revoking, a customary separation agreement and release of claims in a form acceptable to the Company in its reasonable discretion. No severance or other benefits will be paid or provided until the separation agreement and release agreement becomes effective."

3. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Except as set forth in this Amendment, all other provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first written above.

"**Company"**

Aqua Metals, Inc.,
a Delaware corporation

By*: /s/ Stephen R. Clarke*
Stephen R. Clarke,
Chief Executive Officer

"**Executive"**

/s/ Selwyn Mould
Selwyn Mould

Exhibit 10.9

AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDMENT NO. 1 TO EXECUTIVE EMPLOYMENT AGREEMENT ("**Amendment**") is entered into as of August 8, 2016, to be effective as of July 1, 2016, by and between Aqua Metals, Inc., a Delaware corporation ("***Company***"), and Steve Cotton ("***Executive***").

RECITAL

A. The parties hereto have previously entered into that certain Executive Employment Agreement dated January 15, 2015 (the "***Employment Agreement***").

B. The parties hereto desire to amend the Employment Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the parties agree as follows:

1. Section 4.1 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.1:

> **"4.1 Salary.** The Employee will be paid an annual salary of Three Hundred Eighty Thousand Dollars ($380,000). Salary shall be paid on a semi-monthly basis as adjusted from time to time. During employment, the Company will pay Employee the annual base salary in accordance with the terms of the Employee Manual less state and federal withholding and authorized deductions.**"**

2. Section 4.5 of the Employment Agreement is hereby amended by deleting it in its entirety and replacing it with the following new Section 4.5:

> "**4.5 Severance on Termination Without Cause Or For Good Reason** . If the Company terminates the Employee for any reason without Cause (including death or Disability) or Employee resigns from the Company for Good Reason, the Employee shall be entitled to (i) a severance payment of two year's annual salary at the greater of the salary rate effective on the date of termination or the salary rate of $380,000; and (ii) the cost or value of two year's benefits including, without limitation, the cost of all insurance premiums and all other benefits in effect on the date of termination for which the Employee is eligible, less all federal and state withholding. The receipt of any severance or other benefits pursuant to this Section will be subject to Employee signing, and not revoking, a customary separation agreement and release of claims in a form acceptable to the Company in its reasonable discretion. No severance or other benefits will be paid or provided until the separation agreement and release agreement becomes effective."

3. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Except as set forth in this Amendment, all other provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first written above.

"**Company"**

Aqua Metals, Inc.,
a Delaware corporation

By*: /s/ Stephen R. Clarke*
Stephen R. Clarke,
Chief Executive Officer

"**Executive"**

/s/ Steven Cotton
Steve Cotton

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

Section 302 Certification

I, Stephen R. Clarke, certify that:

1) I have reviewed this quarterly report on Form 10-Q of Aqua Metals, Inc.;

2) Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fiscal quarter presented in this report that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2016

By: /s/ Stephen R. Clarke

Stephen R. Clarke, President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

Section 302 Certification

I, Thomas Murphy, certify that:

1) I have reviewed this quarterly report on Form 10-Q of Aqua Metals, Inc.;

2) Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fiscal quarter presented in this report that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial data information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2016

By: /s/ Thomas Murphy
Thomas Murphy, Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Aqua Metals, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Stephen R. Clarke, President and Chief Executive Officer, and Thomas Murphy, Chief Financial Officer, of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

By: /s/ Stephen R. Clarke Dated: August 10, 2016
Stephen R. Clarke
Title: President and Chief Executive Officer

By: /s/ Thomas Murphy Dated: August 10, 2016
Thomas Murphy
Title: Chief Financial Officer

This certification is made solely for the purposes of 18 U.S.C. Section 1350, subject to the knowledge standard contained therein, and not for any other purpose.