**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

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

**May 22, 2008**
Date of Report (Date of earliest event reported)

**Discovery Laboratories, Inc.**
(Exact name of registrant as specified in its charter)

| **Delaware** | **000-26422** | **94-3171943** |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification Number) |

**2600 Kelly Road, Suite 100**
**Warrington, Pennsylvania 18976**
(Address of principal executive offices)

**(215) 488-9300**
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

On May 22, 2008, Discovery Laboratories, Inc. (the "Company") entered into a Committed Equity Financing Facility (the "2008 CEFF") with Kingsbridge Capital Limited ("Kingsbridge") pursuant to a Common Stock Purchase Agreement (the "Purchase Agreement"). The 2008 CEFF is the third CEFF between the Company and Kingsbridge since 2004.

Under the 2008 CEFF, Kingsbridge has committed to finance up to $60 million of capital to support the Company's business plans and corporate activities. Subject to certain limitations, from time to time, the Company can require Kingsbridge to purchase up to an aggregate of 19,328,000 newly-issued shares of the Company's Common Stock, par value $.001 per share. The maximum amount the Company may draw down in any single pricing period is the lesser of 3.0% of the Company's market capitalization immediately prior to the commencement of the pricing period and $10 million. Each pricing period will consist of eight trading days. Unless the Company and Kingsbridge agree otherwise, the 2008 CEFF provides for three trading days between pricing periods.

The shares will be priced on each trading day of each pricing period at a discount to the volume weighted average price (VWAP) on each such trading day, as follows:

| VWAP | % of VWAP | (Applicable Discount) |
|---|---|---|
| Greater than $7.25 per share | 94% | (6)% |
| Less than or equal to $7.25 but greater than $3.85 per share | 92% | (8)% |
| Less than or equal to $3.85 but greater than or equal to $1.75 per share | 90% | (10)% |
| Less than or equal to $1.75 but greater than or equal to $1.15 per share | 88% | (12)% |

The minimum purchase price at which Common Stock may be sold in any pricing period, before applying the appropriate discount, is the greater of $1.15 or 90% of the closing price on the trading day immediately preceding the commencement of a pricing period. If on any trading day during the pricing period for a draw down, the VWAP is less than such minimum purchase price before discount, no shares will be issued with respect to that trading day and the total amount that may be drawn down during that pricing period will be reduced for each such trading day by one-eighth of the amount that the Company initially specified.

The maximum number of shares the Company may sell under the Purchase Agreement is 19,328,000 shares of Common Stock, which is less than the maximum number of shares the Company may sell to Kingsbridge without approval of the Company's stockholders under the applicable listing rules of the Nasdaq Stock Market. This cap on the number of shares issuable under the Purchase Agreement may limit the aggregate proceeds the Company is able to obtain under the 2008 CEFF.

In connection with the 2008 CEFF, the Company issued to Kingsbridge a Warrant (the “Warrant”) to purchase up to 825,000 shares of Common Stock with an exercise price of $2.506 per share. The Warrant is exercisable for a five year period beginning November 22, 2008. The Warrant must be exercised for cash, except in limited circumstances.

The Company is not obligated to utilize any of the $60 million available under the 2008 CEFF and there are no minimum commitment or minimum use penalties. The 2008 CEFF does not contain any operating restrictions or financial covenants affecting the Company or minimum market volume restrictions. The 2008 CEFF does not limit the Company’s ability to offer, sell and/or issue securities of any kind, except that the Company is restricted from issuing “future-priced securities”, which are defined to include securities of any type where the purchase, conversion or exchange price is determined using any floating discount or post-issuance adjustable discount to the market price of the Common Stock. During the term of the 2008 CEFF, Kingsbridge is restricted from entering into or executing any “short sale” (as such term is defined in Rule 200 of Regulation SHO, or any successor regulation, promulgated by the SEC) of the Common Stock.

The Committed Equity Financing Facility entered into by the Company and Kingsbridge on April 17, 2006 (the “2006 CEFF”), remains in effect, and provides for the potential issuance of up to approximately 5.2 million shares through April 17, 2009. The Company's ability to require Kingsbridge to purchase Common Stock under the 2006 CEFF is subject to various limitations. Shares sold to Kingsbridge under the 2006 CEFF are subject to a discount ranging from 6 to 10 percent of the VWAP for each of the eight trading days following initiation of a draw down under the 2006 CEFF. If on any trading day during the eight trading day pricing period for a draw down under the 2006 CEFF, the VWAP is less than the greater of (i) $2.00 or (ii) 85 percent of the closing price of the Common Stock for the trading day immediately preceding the beginning of the draw down period, no shares will be issued with respect to that trading day and the total amount of the draw down for that pricing period will be reduced for each such trading day by one-eighth of the draw down amount that the Company initially specified.

In connection with the 2008 CEFF, the Company entered into a Registration Rights Agreement with Kingsbridge, whereby the Company agreed to file a registration statement with the SEC with respect to the resale of the shares issuable pursuant to the Purchase Agreement, the Registration Rights Agreement and underlying the Warrant. Under the Registration Rights Agreement, if the Company suspends or fails to maintain the effectiveness of the registration statement, the Company may become obligated to Kingsbridge and has the right to pay such amounts in Common Stock. The issuance of any such Common Stock will reduce the number of shares of Common Stock issuable under the 2008 CEFF.

The Company relied on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D promulgated thereunder, in connection with obtaining Kingsbridge's commitment under the 2008 CEFF, and for the issuance of the Warrant in consideration of such commitment.

Copies of the Warrant, the Purchase Agreement and the Registration Rights Agreement are attached as Exhibits 4.1, 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. The foregoing description of the terms of these agreements does not purport to be complete, and is qualified in its entirety by reference to such exhibits. The foregoing documents have been filed in order to provide other investors and the Company's stockholders with information regarding their terms and in accordance with applicable rules and regulations of the Securities and Exchange Commission. Such documents may contain representations and warranties that the Company and Kingsbridge made for the benefit of each other in the context of the applicable terms and conditions and in the context of the specific relationship between such parties. Accordingly, other investors and stockholders should not rely on such representations and warranties. Furthermore, other investors and stockholders should not rely on the representations and warranties as characterizations of the actual state of facts, since they were only made as of the date of the respective documents. Information concerning the subject matter of such representations and warranties may change after such date, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the Securities and Exchange Commission.

On May 26, 2008 the Company issued a press release announcing the entry into the 2008 CEFF. The full text of the press release is set forth in Exhibit 99.1 to this Current Report on Form 8-K.

**Item 3.02. Unregistered Sales of Equity Securities**

The information under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits:

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| 4.1 | Warrant dated May 22, 2008, by and between Kingsbridge Capital and the Company |
| 10.1 | Common Stock Purchase Agreement, dated as of May 22, 2008, by and between Kingsbridge Capital and the Company |
| 10.2 | Registration Rights Agreement, dated as of May 22, 2008, by and between Kingsbridge Capital and the Company |
| 99.1 | Press Release dated May 26, 2008 |

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

**SIGNATURES**

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

**Discovery Laboratories, Inc.**

By: /s/ Robert J. Capetola

Robert J. Capetola, Ph.D.
President and Chief Executive Officer

Date: May 27, 2008

**WARRANT**

THE SECURITIES EVIDENCED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

**May 22, 2008**

Warrant to Purchase up to 825,000 shares of Common Stock of Discovery Laboratories, Inc. (the "Company").

In consideration for Kingsbridge Capital Limited (the "Investor") agreeing to enter into that certain Common Stock Purchase Agreement, dated as of the date hereof, between the Investor and the Company (the "Agreement"), the Company hereby agrees that the Investor or any other Warrant Holder (as defined below) is entitled, on the terms and conditions set forth below, to purchase from the Company at any time during the Exercise Period (as defined below) up to 825,000 fully paid and non-assessable shares of common stock, par value $0.001 per share, of the Company (the "Common Stock") at the Exercise Price (as defined below), as the same may be adjusted from time to time pursuant to Section 6 hereof. The resale of the shares of Common Stock or other securities issuable upon exercise or exchange of this Warrant is subject to the provisions of the Registration Rights Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings given them in the Agreement.

Section 1. Definitions.

"Affiliate" shall mean any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under direct or indirect common control with any other Person. For the purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the term "controls" and "controlled" have meanings correlative to the foregoing.

"Closing Price" as of any particular day shall mean the closing price per share of the Company's Common Stock as reported by the Principal Market on such day.

"Exercise Period" shall mean that period beginning six months after the date of this Warrant and continuing until the earlier of (i) the expiration of the five-year period thereafter or (ii) a Funding Default, subject in each case to earlier termination in accordance with Section 6 hereof.

"Exercise Price" as of the date hereof shall mean $2.506 .

"Funding Default" shall mean a failure by Investor to accept a Draw Down Notice made by the Company and to acquire and pay for the Shares in accordance therewith within three (3) Trading Days following the delivery of such Shares to the Investor, provided such Draw Down Notice was made in accordance with the terms and conditions of the Agreement (including the satisfaction or waiver of the conditions to the obligation of the Investor to accept a Draw Down set forth in Article VII of the Agreement), provided further, that such failure was reasonably within the control of the Investor.

"Per Share Warrant Value" shall mean the difference resulting from subtracting the Exercise Price from the Closing Price on the Trading Day immediately preceding the Exercise Date.

"Person" shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Principal Market" shall mean the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, the American Stock Exchange or the New York Stock Exchange, whichever is at the time the principal trading exchange or market for the Common Stock.

"SEC" shall mean the United States Securities and Exchange Commission.

"Trading Day" shall mean any day other than a Saturday or a Sunday on which the Principal Market is open for trading in equity securities.

"Warrant Holder" shall mean the Investor or any permitted assignee or permitted transferee of all or any portion of this Warrant.

"Warrant Shares" shall mean those shares of Common Stock received or to be received upon exercise of this Warrant.

Section 2. Exercise.

(a) Method of Exercise. This Warrant may be exercised in whole or in part (but not as to a fractional share of Common Stock), at any time and from time to time during the Exercise Period, by the Warrant Holder by surrender of this Warrant, with the form of exercise attached hereto as Exhibit A completed and duly executed by the Warrant Holder (the "Exercise Notice"), to the Company at the address set forth in Section 10.4 of the Agreement, accompanied by payment of the Exercise Price multiplied by the number of shares of Common Stock for which this Warrant is being exercised (the "Aggregate Exercise Price"). The later of the date on which an Exercise Notice or payment of the Exercise Price (unless this Warrant is exercised in accordance with Section 2(c) below) is received by the Company in accordance with this clause (a) shall be deemed an "Exercise Date."

(b) Payment of Aggregate Exercise Price. Subject to paragraph (c) below, payment of the Aggregate Exercise Price shall be made by wire transfer of immediately available funds to an account designated by the Company. If the amount of the payment received by the Company is less than the Aggregate Exercise Price, the Warrant Holder will be notified of the deficiency and shall make payment in that amount within three (3) Trading Days. In the event the payment exceeds the Aggregate Exercise Price, the Company will refund the excess to the Warrant Holder within five (5) Trading Days of receipt.

(c) Cashless Exercise. In the event that the Warrant Shares to be received by the Warrant Holder upon exercise of the Warrant may not be resold pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act of 1933, as amended ("Securities Act"), and applicable state laws, the Warrant Holder may, as an alternative to payment of the Aggregate Exercise Price upon exercise in accordance with paragraph (b) above, elect to effect a cashless exercise by so indicating on the Exercise Notice and including a calculation of the number of shares of Common Stock to be issued upon such exercise in accordance with the terms hereof (a "Cashless Exercise"). If a registration statement on Form S-3 under the Securities Act or such other form as deemed appropriate by counsel to the Company for the registration of the resale by the Warrant Holder of (x) the shares of Common Stock of the Company that may be purchased under the Agreement, (y) the Warrant Shares, or (z) any securities issued or issuable with respect to any of the foregoing by way of exchange, stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise, has been declared effective by the SEC and remains effective, the Company may, in its sole discretion, require the Warrant Holder to pay the Exercise Price of the Warrant Shares being purchased by the Warrant Holder under this Warrant. The Company may, in its sole discretion, permit the Warrant Holder to effect a Cashless Exercise at any time. In the event of a Cashless Exercise, the Warrant Holder shall receive that number of shares of Common Stock determined by (i) multiplying the number of Warrant Shares for which this Warrant is being exercised by the Per Share Warrant Value and (ii) dividing the product by the average Closing Price of the Common Stock during the five (5) Trading Days immediately preceding the Exercise Date, rounded to the nearest whole share. The Company shall cancel the total number of Warrant Shares equal to the excess of the number of the Warrant Shares for which this Warrant is being exercised over the number of Warrant Shares to be received by the Warrant Holder pursuant to such Cashless Exercise.

(d) Replacement Warrant. In the event that the Warrant is not exercised in full, the number of Warrant Shares shall be reduced by the number of such Warrant Shares for which this Warrant is exercised, and the Company, at its expense, shall forthwith issue and deliver to or upon the order of the Warrant Holder a new Warrant of like tenor in the name of the Warrant Holder, reflecting such adjusted number of Warrant Shares.

Section 3. Ten Percent Limitation. The Warrant Holder may not exercise this Warrant such that the number of Warrant Shares to be received pursuant to such exercise aggregated with all other shares of Common Stock that are then beneficially owned or deemed to be beneficially owned by the Warrant Holder would result in (i) the Warrant Holder owning more than 9.9% of all of such Common Stock as would be outstanding on such Exercise Date, as determined in accordance with Section 13(d) of the Exchange Act or (ii) the Company being required to file any notification or report forms under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended.

Section 4. Delivery of Warrant Shares.

(a) Subject to the terms and conditions of this Warrant, as soon as practicable after the exercise of this Warrant in full or in part, and in any event within ten (10) Trading Days thereafter, the Company at its expense (including, without limitation, the payment by it of any applicable issue taxes) will cause to be issued in the name of and delivered to the Warrant Holder, or as the Warrant Holder may lawfully direct, a certificate or certificates for, or make deposit with the Depositary Trust Company via book-entry of, the number of validly issued, fully paid and non-assessable Warrant Shares to which the Warrant Holder shall be entitled on such exercise, together with any other stock or other securities or property (including cash, where applicable) to which the Warrant Holder is entitled upon such exercise in accordance with the provisions hereof.

(b) This Warrant may not be exercised as to fractional shares of Common Stock. In the event that the exercise of this Warrant, in full or in part, would result in the issuance of any fractional share of Common Stock, then in such event the Warrant Holder shall receive the number of shares rounded to the nearest whole share.

Section 5. Representations, Warranties and Covenants of the Company.

(a) The Warrant Shares, when issued in accordance with the terms hereof, will be duly authorized and, when paid for or issued in accordance with the terms hereof, shall be validly issued, fully paid and non-assessable.

(b) The Company shall take all commercially reasonable action and proceedings as may be required and permitted by applicable law, rule and regulation for the legal and valid issuance of this Warrant and the Warrant Shares to the Warrant Holder.

(c) The Company has authorized and reserved for issuance to the Warrant Holder the requisite number of shares of Common Stock to be issued pursuant to this Warrant. The Company shall at all times reserve and keep available, solely for issuance and delivery as Warrant Shares hereunder, such shares of Common Stock as shall from time to time be issuable as Warrant Shares.

(d) From the date hereof through the last date on which this Warrant is exercisable, the Company shall take all steps commercially reasonable to ensure that the Common Stock remains listed or quoted on the Principal Market.

Section 6. Adjustment of the Exercise Price. The Exercise Price and, accordingly, the number of Warrant Shares issuable upon exercise of the Warrant, shall be subject to adjustment from time to time upon the happening of certain events as follows:

(a) Reclassification, Consolidation, Merger, Mandatory Share Exchange, Sale or Transfer.

(i) Upon occurrence of any of the events specified in subsection (a)(ii) below (the "Adjustment Events") while this Warrant is unexpired and not exercised in full, the Warrant Holder may in its sole discretion require the Company, or any successor or purchasing corporation, as the case may be, without payment of any additional consideration therefor, upon surrender by the Warrant Holder of the Warrant to be replaced, to execute and deliver to the Warrant Holder a new Warrant providing that the Warrant Holder shall have the right to exercise such new Warrant (upon terms not less favorable to the Warrant Holder than those then applicable to this Warrant) and to receive upon such exercise, in lieu of each share of Common Stock theretofore issuable upon exercise of this Warrant, the kind and amount of shares of stock, other securities, money or property receivable upon such Adjustment Event by the holder of one share of Common Stock issuable upon exercise of this Warrant had this Warrant been exercised immediately prior to such Adjustment Event. Such new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6.

(ii) The Adjustment Events shall be (1) any reclassification or change of Common Stock (other than a change in par value, as a result of a subdivision or combination of Common Stock or in connection with an Excluded Merger or Sale) and (2) any consolidation, merger or mandatory share exchange of the Company with or into another corporation (other than a merger or mandatory share exchange with another corporation in which the Company is a continuing corporation and which does not result in any reclassification or change other than a change in par value or as a result of a subdivision or combination of Common Stock), other than (each of the following referred to as an "Excluded Merger or Sale") a transaction involving (A) sale of all or substantially all of the assets of the Company or (B) any merger, consolidation or similar transaction where the consideration payable to the stockholders of the Company by the acquiring Person consists substantially of cash or publicly traded securities, or a combination thereof, or where the acquiring Person does not agree to assume the obligations of the Company under outstanding warrants (including this Warrant). In the event of an Excluded Merger or Sale, the Company shall deliver a notice to the Warrant Holder at least 10 days before the consummation of such Excluded Merger or Sale, the Warrant Holder may exercise this Warrant at any time before the consummation of such Excluded Merger or Sale (and such exercise may be made contingent upon the consummation of such Excluded Merger or Sale), and any portion of this Warrant that has not been exercised before consummation of such Excluded Merger or Sale shall terminate and expire, and shall no longer be outstanding.

(b) Subdivision or Combination of Shares. If the Company, at any time while this Warrant is unexpired and not exercised in full, shall subdivide its Common Stock, the Exercise Price shall be proportionately reduced as of the effective date of such subdivision, or, if the Company shall take a record of holders of its Common Stock for the purpose of so subdividing its Common Stock, as of such record date, whichever is earlier. If the Company, at any time while this Warrant is unexpired and not exercised in full, shall combine its Common Stock, the Exercise Price shall be proportionately increased as of the effective date of such combination, or, if the Company shall take a record of holders of its Common Stock for the purpose of so combining its Common Stock, as of such record date, whichever is earlier.

(c) Stock Dividends. If the Company, at any time while this Warrant is unexpired and not exercised in full, shall pay a stock dividend or other distribution in shares of Common Stock to all holders of Common Stock, then the Exercise Price shall be adjusted, as of the date the Company shall take a record of the holders of its Common Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the date of such payment or other distribution), to that price determined by multiplying the Exercise Price in effect immediately prior to such payment or other distribution by a fraction: (i) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution. The provisions of this subsection (c) shall not apply under any of the circumstances for which an adjustment is provided in subsections (a) or (b).

(d) Liquidating Dividends, Etc. If the Company, at any time while this Warrant is unexpired and not exercised in full, makes a distribution of its assets or evidences of indebtedness to the holders of its Common Stock as a dividend in liquidation or by way of return of capital or other than as a dividend payable out of earnings or surplus legally available for dividends under applicable law or any distribution to such holders made in respect of the sale of all or substantially all of the Company's assets (other than under the circumstances provided for in the foregoing subsections (a) through (c)), then the Warrant Holder shall be entitled to receive upon exercise of this Warrant in addition to the Warrant Shares receivable in connection therewith, and without payment of any consideration other than the Exercise Price, the kind and amount of such distribution per share of Common Stock multiplied by the number of Warrant Shares that, on the record date for such distribution, are issuable upon such exercise of the Warrant (with no further adjustment being made following any event which causes a subsequent adjustment in the number of Warrant Shares issuable), and an appropriate provision therefor shall be made a part of any such distribution. The value of a distribution that is paid in other than cash shall be determined in good faith by the Board of Directors of the Company. Notwithstanding the foregoing, in the event of a proposed dividend in liquidation or distribution to the stockholders made in respect of the sale of all or substantially all of the Company's assets, the Company shall deliver a notice to the Warrant Holder at least 10 days before the date on which the Company shall take a record of the holders of its Common Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, at least 10 days before the date of such payment or other distribution), the Warrant Holder may exercise this Warrant at any time before such record date or the date of such payment or other distribution, as applicable, (and such exercise may be made contingent upon such payment or other distribution), and any portion of this Warrant that has not been exercised before such record date or the date of such payment or other distribution, as applicable, shall terminate and expire, and shall no longer be outstanding.

(e) Adjustment for Spin Off. If, for any reason, prior to the exercise of this Warrant in full, the Company spins off or otherwise divests itself of a part of its business or operations or disposes all or a part of its assets in a transaction (a "Spin Off") in which the Company does not receive compensation for such business, operations or assets, but causes securities of another entity ("Spin Off Securities") to be issued to all or substantially all holders of Common Stock, then the Company shall cause (i) to be reserved Spin Off Securities equal to the number thereof which would have been issued to the Warrant Holder in the event that the entire unexercised portion of this Warrant outstanding on the record date (the "Record Date") for determining the number of Spin Off Securities to be issued to holders of Common Stock had been exercised by the Warrant Holder as of the close of business on the Trading Day immediately prior to the Record Date (the "Reserved Spin Off Shares"), and (ii) to be issued to the Warrant Holder on the exercise of all or any unexercised portion of this Warrant, such amount of the Reserved Spin Off Shares equal to (x) the Reserved Spin Off Shares multiplied by (y) a fraction, of which (I) the numerator is the unexercised portion of this Warrant then being exercised, and (II) the denominator is the aggregate amount of the unexercised portion of this Warrant.

Section 7. Notice of Adjustments. Whenever the Exercise Price or number of Warrant Shares shall be adjusted pursuant to Section 6 hereof, the Company shall promptly prepare a certificate signed by its Chief Executive Officer or Chief Financial Officer setting forth in reasonable detail the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated (including a description of the basis on which the Company's Board of Directors made any determination hereunder), and the Exercise Price and number of Warrant Shares purchasable at that Exercise Price after giving effect to such adjustment, and shall promptly cause copies of such certificate to be delivered to the Warrant Holder by a means set forth in Section 10.4 of the Agreement.

Section 8. No Impairment. The Company will not, by amendment of its Charter or Bylaws or through any reorganization, transfer of assets, consolidation, merger, dissolution or issue or sale of securities, willfully avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrant Holder against wrongful impairment. Without limiting the generality of the foregoing, the Company (a) will not increase the par value of any Warrant Shares above the amount payable therefor on such exercise, and (b) will take all such action as may be reasonably necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Warrant Shares on the exercise of this Warrant. Notwithstanding the foregoing, nothing in this Section 8 shall restrict or impair the Company's right to effect any changes to the rights, preferences, privileges or restrictions associated with the Warrant Shares so long as such changes do not affect the rights, preferences, privileges or restrictions associated with the Warrant Shares in a manner adversely different from the effect that such changes have generally on the rights, preferences, privileges or restrictions associated with all other shares of Common Stock.

Section 9. Rights As Stockholder. Except as set forth in Section 6 above, prior to exercise of this Warrant, the Warrant Holder shall not be entitled to any rights as a stockholder of the Company with respect to the Warrant Shares, including (without limitation) the right to vote such shares, receive dividends or other distributions thereon or be notified of stockholder meetings.

Section 10. Replacement of Warrant. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of the Warrant and, in the case of any such loss, theft or destruction of the Warrant, upon delivery of an indemnity agreement or security reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, on surrender and cancellation of such Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

Section 11. Choice of Law. This Warrant shall be construed under the laws of the State of New York.

Section 12. Entire Agreement; Amendments. Except for any written instrument concurrent or subsequent to the date hereof executed by the Company and the Investor, this Warrant, the Agreement and the Registration Rights Agreement contain the entire understanding of the parties with respect to the matters covered hereby and thereby. No provision of this Warrant may be waived or amended other than by a written instrument signed by the party against whom enforcement of any such amendment or waiver is sought.

Section 13. Restricted Securities.

(a) Registration or Exemption Required. This Warrant has been issued in a transaction exempt from the registration requirements of the Securities Act in reliance upon the provisions of Section 4(2) thereof and Regulation D promulgated thereunder, and/or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to this Warrant. This Warrant and the Warrant Shares issuable upon exercise of this Warrant may not be resold except pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act and applicable state laws.

(b) Legend. Any replacement Warrants issued pursuant to Section 2 and Section 10 hereof and, unless a registration statement has been declared effective by the SEC and remains effective in accordance with the Securities Act with respect thereto, any Warrant Shares issued upon exercise hereof, shall bear the following legend:

> "THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER APPLICABLE SECURITIES LAWS AND HAVE BEEN ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO A TRANSACTION WHICH IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION."

(c) No Other Legend or Stock Transfer Restrictions. No legend other than the one specified in Section 13(b) has been or shall be placed on the share certificates representing the Warrant Shares and no instructions or "stop transfer orders" (so called "stock transfer restrictions") or other restrictions have been or shall be given to the Company's transfer agent with respect thereto other than as expressly set forth in this Section 13.

(d) Assignment. Assuming the conditions of Section 13(a) above regarding registration or exemption have been satisfied, the Warrant Holder may sell, transfer, assign, pledge or otherwise dispose of this Warrant (each of the foregoing, a "Transfer"), in whole or in part, but only to an Affiliate of the Warrant Holder. The Warrant Holder shall deliver a written notice to Company, substantially in the form of the Assignment attached hereto as Exhibit B, indicating the person or persons to whom the Warrant shall be Transferred and the respective number of Warrant Shares to be covered by the warrants to be Transferred to each assignee. The Company shall effect the Transfer within ten (10) days, and shall deliver to the Transferee(s) designated by the Warrant Holder a Warrant or Warrants of like tenor and terms for the appropriate number of shares. In connection with and as a condition of any such proposed Transfer, the Company may require (i) the Warrant Holder to provide an opinion of counsel to the Warrant Holder in form and substance reasonably satisfactory to the Company to the effect that the proposed Transfer complies with all applicable federal and state securities laws and (ii) any such Transferee to provide customary representations and warranties attendant to the acquisition of unregistered securities, including without limitation the transferee's investment intent and status as an "accredited investor" within the meaning of Regulation D.

(e) Investor's Compliance. Nothing in this Section 13 shall affect in any way the Investor's obligations under any agreement to comply with all applicable securities laws upon resale of the Common Stock.

Section 14. Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be given in accordance with Section 10.4 of the Agreement.

Section 15. Miscellaneous. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

Section 16. Company Call Right.

(a) If a Funding Default occurs, the Company shall have the right to demand the surrender of this Warrant or any remaining portion thereof, Warrant Shares and/or cash from the Investor as follows (the "Call Right"):

(i) If the Investor has not previously exercised this Warrant in full, then the Company shall have a right to demand the surrender of this Warrant, or remaining portion thereof, from the Investor without compensation, and the Investor shall promptly surrender this Warrant, or remaining portion thereof. Following such demand for surrender, this Warrant shall automatically be deemed to have been canceled and shall have no further force or effect.

(ii) If, prior to receiving a Call Right Notice (as defined below), the Investor has previously exercised this Warrant with respect to some or all of the Warrant Shares, and the Investor has not previously sold such Warrant Shares, then the Company shall have a right to purchase from the Investor that number of shares of Common Stock equal to the number of shares of Common Stock issued in connection with the exercise(s) of the Warrant, at a repurchase price per share equal to the price per share paid by the Investor in connection with such exercise(s). For greater certainty, (a) if Warrant Shares were exercised for cash, the purchase price per share under the Call Right shall be equal to the Exercise Price, (b) if Warrant Shares were exercised in a Cashless Exercise, the purchase price per share for such Warrant Shares under the Call Right shall be zero, and (c) if such Warrant Shares were exercised on both a cash and Cashless Exercise basis, the purchase price per share under the Call Right shall be equal to the total amount of cash paid in connection with such cash exercise(s) divided by the total number of shares of Common Stock issued in connection with all exercises of the Warrant (whether on a cash or Cashless Exercise basis).

(iii) If, prior to receiving a Call Right Notice, the Investor has previously exercised this Warrant with respect to some or all of the Warrant Shares, and the Investor subsequently sold such Warrant Shares, then the Investor shall remit to the Company the excess, if any, of (x) the proceeds received by Investor through the sale of such Warrant Shares, over (y) the aggregate Exercise Price for such Warrant Shares. In the event that the Investor obtained such Warrant Shares through a Cashless Exercise, then the Investor shall instead remit to the Company all proceeds received by the Investor through the sale of such Warrant Shares. For the avoidance of doubt, in the event that the Investor has sold some or all of the Warrant Shares prior to receiving a Call Right Notice, then the right set forth in this paragraph (iii) shall constitute the sole Call Right of the Company with respect to such Warrant Shares which have been sold.

(b) The Company may exercise the Call Right by delivering a notice (the "Call Right Notice") to the Investor within thirty (30) days after the occurrence of a Funding Default. On the tenth (10th) business day following delivery of the Call Right Notice to the Investor, the Company shall tender the purchase price, if any, and the Investor shall tender shares of Common Stock, if any, to be sold to the Company pursuant to the Call Right Notice, immediately following which the Company and the Investor shall consummate such purchase and sale. The Call Right shall survive both the assignment of the Warrant by the Investor and the disposition of the Warrant Shares by the Investor following exercise of the Warrant.

[Remainder of Page Intentionally Left Blank. Signature Page Follows.]

IN WITNESS WHEREOF, this Warrant was duly executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

DISCOVERY LABORATORIES, INC.

By: /s/ John G. Cooper

Name: John G. Cooper
Title: Executive Vice President and Chief Financial Officer

Investor acknowledges and agrees to the terms and conditions of this Warrant.

KINGSBRIDGE CAPITAL LIMITED

By: /s/ Tony Gardner-Hillman

Tony Gardner-Hillman
Director

**EXHIBIT A TO THE WARRANT**

**EXERCISE FORM**

**DISCOVERY LABORATORIES, INC.**

The undersigned hereby irrevocably exercises the right to purchase _____ shares of Common Stock of Discovery Laboratories, Inc., a Delaware corporation (the "Company"), evidenced by the attached Warrant, and (CIRCLE EITHER (i) or (ii)) (i) tenders herewith payment of the Aggregate Exercise Price with respect to such shares in full, in the amount of $_____, in cash, by certified or official bank check or by wire transfer for the account of the Company or (ii) elects, pursuant to Section 2(c) of the Warrant, to convert such Warrant into shares of Common Stock of the Company on a cashless exercise basis, all in accordance with the conditions and provisions of said Warrant.

The undersigned requests that stock certificates for such Warrant Shares be issued, and a Warrant representing any unexercised portion hereof be issued, pursuant to this Warrant, in the name of the registered Warrant Holder and delivered to the undersigned at the address set forth below.

Dated:_____

_____
Signature of Registered Holder

_____
Name of Registered Holder (Print)

_____
Address

**EXHIBIT B TO THE WARRANT**

**ASSIGNMENT**

(To be executed by the registered Warrant Holder desiring to transfer the Warrant)

FOR VALUED RECEIVED, the undersigned Warrant Holder of the attached Warrant hereby sells, assigns and transfers unto the persons below named the right to purchase _____ shares of Common Stock of Discovery Laboratories, Inc. (the "Company") evidenced by the attached Warrant and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Warrant on the books of the Company, with full power of substitution in the premises.

Dated:_____

_____
Signature

Fill in for new Registration of Warrant:

_____
Name

_____
Address

_____
Please print name and address of assignee (including zip code number)

*Execution Copy*

**COMMON STOCK PURCHASE AGREEMENT**

**by and between**

**KINGSBRIDGE CAPITAL LIMITED**

**and**

**DISCOVERY LABORATORIES, INC.**

**dated as of May 22, 2008**

This COMMON STOCK PURCHASE AGREEMENT (this "Agreement") is entered into as of the 22d day of May, 2008, by and between Kingsbridge Capital Limited, an entity organized and existing under the laws of the British Virgin Islands, whose registered address is Palm Grove House, 2nd Floor, Road Town, Tortola, British Virgin Islands (the "Investor"), and Discovery Laboratories, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company").

WHEREAS, the parties desire that, upon the terms and subject to the conditions and limitations set forth herein, the Company may issue and sell to the Investor, from time to time as provided herein, and the Investor shall purchase from the Company, up to $60 million worth of shares of Common Stock (as defined below); and

WHEREAS, such investments will be made in reliance upon the provisions of Section 4(2) ("Section 4(2)") and Regulation D ("Regulation D") of the United States Securities Act of 1933, as amended and the rules and regulations promulgated thereunder (the "Securities Act"), and/or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the investments in Common Stock to be made hereunder; and

WHEREAS, the parties hereto are concurrently entering into a Registration Rights Agreement in the form of Exhibit A hereto (the "Registration Rights Agreement") pursuant to which the Company shall register the Common Stock issued and sold to the Investor under this Agreement and issuable under the Warrant (as defined below), upon the terms and subject to the conditions set forth therein; and

WHEREAS, in consideration for the Investor's execution and delivery of, and its performance of its obligations under, this Agreement, the Company is concurrently issuing to the Investor a Warrant in the form of Exhibit B hereto (the "Warrant") pursuant to which the Investor may purchase from the Company up to 825,000 shares of Common Stock, upon the terms and subject to the conditions set forth therein;

NOW, THEREFORE, the parties hereto agree as follows:

## ARTICLE I
## DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"Blackout Amount" shall have the meaning assigned to such term in the Registration Rights Agreement.

"Blackout Shares" shall have the meaning assigned to such term in the Registration Rights Agreement.

"Bylaws" shall have the meaning assigned to such term in Section 4.3 hereof.

"Charter" shall have the meaning assigned to such term in Section 4.3 hereof.

"Closing Date" shall have the meaning assigned to such term in Section 2.2 hereof.

"Closing Price" as of any particular day shall mean the closing price per share of the Common Stock as reported by Bloomberg L.P. on such day.

"Commission" means the United States Securities and Exchange Commission.

"Commission Documents" shall have the meaning assigned to such term in Section 4.6 hereof.

"Commitment Period" means the period commencing on the Effective Date and expiring on the earliest to occur of (i) the date on which the Investor shall have purchased Shares pursuant to this Agreement for an aggregate purchase price equal to the Maximum Commitment Amount, (ii) the date this Agreement is terminated pursuant to Article VIII hereof, and (iii) the date occurring thirty-six (36) months from the Effective Date.

"Common Stock" means the common stock of the Company, par value $0.001 per share.

"Condition Satisfaction Date" shall have the meaning assigned to such term in Article VII hereof.

"Convertible Security" shall have the meaning assigned to such term in Section 6.07 hereof

"Damages" means any loss, claim, damage, liability, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses and costs and reasonable expenses of expert witnesses and investigation).

"Draw Down" shall have the meaning assigned to such term in Section 3.1 hereof.

"Draw Down Amount" means the actual dollar amount of a Draw Down paid to the Company.

"Draw Down Discount Price" means (i) 88% of the VWAP on any Trading Day during a Draw Down Pricing Period when the VWAP equals or exceeds $1.15 but is less than or equal to $1.75, (ii) 90% of the VWAP on any Trading Day during the Draw Down Pricing Period when VWAP exceeds $1.75 but is less than or equal to $3.85, (iii) 92% of the VWAP on any Trading Day during the Draw Down Pricing Period when VWAP exceeds $3.85 but is less than or equal to $7.25 or (iv) 94% of the VWAP on any Trading Day during the Draw Down Pricing Period when VWAP exceeds $7.25.

"Draw Down Notice" shall have the meaning assigned to such term in Section 3.1 hereof.

"Draw Down Pricing Period" shall mean, with respect to each Draw Down, a period of eight (8) consecutive Trading Days beginning on the first Trading Day specified in a Draw Down Notice.

"DTC" shall mean the Depository Trust Company, or any successor thereto.

"Effective Date" means the first Trading Day immediately following the date on which the Registration Statement is declared effective by the Commission.

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

"Excluded Merger or Sale" shall have the meaning assigned to such term in the Warrant.

"FINRA" means the Financial Industry Regulatory Authority.

"Knowledge" means the actual knowledge of those officers of the Company required to file statements pursuant to Section 16 of the Exchange Act.

"LIBOR" means the offered rate for twelve-month U.S. dollar deposits that appears on Moneyline Telerate Page 3750 (or such other page as may replace such Moneyline Telerate Page 3750 for the purpose of displaying comparable rates), as of 11:00 a.m. (London time) two (2) business days prior to the beginning of the relevant period.

"Make Whole Amount" shall have the meaning specified in Section 3.7.

"Market Capitalization" means, as of any Trading Day, the product of (i) the closing sale price of the Company's Common Stock as reported by Bloomberg L.P. using the AQR function and (ii) the number of outstanding shares of Common Stock of the Company as reported by Bloomberg L.P. using the DES function.

"Material Adverse Effect" means any effect that is not negated, corrected, cured or otherwise remedied within a reasonable period of time on the business, operations, properties or financial condition of the Company and its consolidated subsidiaries that is material and adverse to the Company and such subsidiaries, taken as a whole, and/or any condition, circumstance, or situation that would prohibit or otherwise interfere with the ability of the Company to perform any of its obligations under this Agreement, the Registration Rights Agreement or the Warrant in any material respect; provided, however, that none of the following shall constitute a "Material Adverse Effect": (i) the effects of conditions or events that are generally applicable to the capital, financial, banking or currency markets or the biotechnology or pharmaceutical industries; (ii) the effects of conditions or events that are reasonably expected to occur in the Company's ordinary course of business (such as, by way of example only, failed clinical trials, serious adverse events involving the Company's product candidates or products, delays in product development or commercial launch, unfavorable regulatory determinations, difficulties in generating product sales or involving collaborators or intellectual property disputes), except for purposes of Section 4.9 herein; (iii) any changes or effects resulting from the announcement or consummation of the transactions contemplated by this Agreement, including, without limitation, any changes or effects associated with any particular Draw Down, and (iv) changes in the market price of the Common Stock.

"Maximum Commitment Amount" means the lesser of (i) $60 million in aggregate Draw Down Amounts or (ii) 19,328,000 shares of Common Stock (as adjusted for stock splits, stock combinations, stock dividends and recapitalizations that occur on or after the date of this Agreement) minus the number of Blackout Shares, if any, delivered to the Investor under the Registration Rights Agreement; provided, however, that the Maximum Commitment Amount shall not exceed that number of shares of Common Stock that the Company may issue pursuant to this Agreement and the transactions contemplated hereby without breaching the Company's obligations under the rules and regulations of the Principal Market.

"Maximum Draw Down Amount" means the lesser of $10 million and 3.0% of the Company's Market Capitalization at the time of the Draw Down.

"Permitted Transaction" shall have the meaning assigned to such term in Section 6.6 hereof.

"Person" means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including any government or political subdivision or an agency or instrumentality thereof.

"Principal Market" means the NASDAQ Capital Market, the NASDAQ Global Select Market, the NASDAQ Global Market, the American Stock Exchange or the New York Stock Exchange, whichever is at the time the principal trading exchange or market for the Common Stock.

"Prohibited Transaction" shall have the meaning assigned to such term in Section 6.7 hereof.

"Prospectus" as used in this Agreement means the prospectus in the form included in the Registration Statement, as supplemented from time to time pursuant to Rule 424(b) of the Securities Act (including, without limitation, any information that may have been omitted from such prospectus pursuant to Rules 430(a), 430(b) and 430(c) of the Securities Act).

"Registrable Securities" means (i) the Shares, (ii) the Warrant Shares, and (iii) any securities issued or issuable with respect to any of the foregoing by way of exchange, stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise. As to any particular Registrable Securities, once issued such securities shall cease to be Registrable Securities when (w) the Registration Statement has been declared effective by the Commission and such Registrable Securities have been disposed of pursuant to the Registration Statement, (x) such Registrable Securities have been sold under circumstances under which all of the applicable conditions of Rule 144 (or any similar provision then in force) under the Securities Act ("Rule 144") are met, (y) such time as such Registrable Securities have been otherwise transferred to holders who may trade such shares without restriction under the Securities Act, and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend or (z) in the opinion of counsel to the Company such Registrable Securities may be sold without registration and without any time, volume or manner limitations pursuant to Rule 144 (or any similar provision then in effect) under the Securities Act.

"Registration Rights Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Registration Statement" shall have the meaning assigned to such term in the Registration Rights Agreement.

"Regulation D" shall have the meaning set forth in the recitals of this Agreement. "Section 4(2)" shall have the meaning set forth in the recitals of this Agreement.

"Securities Act" shall have the meaning set forth in the recitals of this Agreement.

"Settlement Date" shall have the meaning assigned to such term in Section 3.5 hereof.

"Shares" means the shares of Common Stock of the Company that are and/or may be purchased hereunder.

"Trading Day" means any day other than a Saturday or a Sunday on which the Principal Market is open for trading in equity securities.

"VWAP" means the volume weighted average price (the aggregate sales price of all trades of Common Stock during each Trading Day divided by the total number of shares of Common Stock traded during such Trading Day) of the Common Stock during any Trading Day as reported by Bloomberg, L.P. using the AQR function.

"Warrant" shall have the meaning set forth in the recitals of this Agreement.

"Warrant Shares" means the shares of Common Stock issuable to the Investor upon exercise of the Warrant.

## ARTICLE II
## PURCHASE AND SALE OF COMMON STOCK

Section 2.1 Purchase and Sale of Stock. Upon the terms and subject to the conditions set forth in this Agreement, the Company shall to the extent it elects to make Draw Downs in accordance with Article III hereof, issue and sell to the Investor and the Investor shall purchase Common Stock from the Company for an aggregate (in Draw Down Amounts) of up to the Maximum Commitment Amount, consisting of purchases based on Draw Downs in accordance with Article III hereof.

Section 2.2 Closing. In consideration of and in express reliance upon the representations, warranties, covenants, terms and conditions of this Agreement, the Company agrees to issue and sell to the Investor, and the Investor agrees to purchase from the Company, that number of the Shares to be issued in connection with each Draw Down. The execution and delivery of this Agreement (the "Closing") shall take place at the offices of Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038 at 5:00 p.m. local time on May 22, 2008, or at such other time and place or on such date as the Investor and the Company may agree upon (the "Closing Date"). Each party shall deliver at or prior to the Closing all documents, instruments and writings required to be delivered at the Closing by such party pursuant to this Agreement.

Section 2.3 Registration Statement and Prospectus. The Company shall prepare and file with the Commission the Registration Statement (including the Prospectus) in accordance with the provisions of the Securities Act and the Registration Rights Agreement.

Section 2.4 Warrant. On the Closing Date, the Company shall issue and deliver the Warrant to the Investor.

Section 2.5 Blackout Shares. The Company shall deliver any Blackout Amount or issue and deliver any Blackout Shares to the Investor in accordance with Section 1.1(e) of the Registration Rights Agreement.

## ARTICLE III
## DRAW DOWN TERMS

Subject to the satisfaction of the conditions hereinafter set forth in this Agreement, the parties agree as follows:

Section 3.1 Draw Down Notice. During the Commitment Period, the Company may, in its sole discretion, issue a Draw Down Notice (as hereinafter defined) which shall specify the dollar amount of Shares the Company elects to sell to the Investor (each such election, a "Draw Down") up to a Draw Down Amount equal to the Maximum Draw Down Amount, which Draw Down the Investor shall be obligated to accept. The Company shall inform the Investor in writing by sending a duly completed Draw Down Notice (as hereinafter defined) in the form of Exhibit C hereto by e-mail to the addresses set forth in Section 10.4, with a copy to the Investor's counsel, as to such Draw Down Amount before commencement of trading on the first Trading Day of the related Draw Down Pricing Period (the "Draw Down Notice"). In addition to the Draw Down Amount, each Draw Down Notice shall designate the first Trading Day of the Draw Down Pricing Period. In no event shall any Draw Down Amount exceed the Maximum Draw Down Amount. Each Draw Down Notice shall be accompanied by a certificate, signed by the Chief Executive Officer, Chief Financial Officer or Executive Vice President and General Counsel, dated as of the date of such Draw Down Notice, in the form of Exhibit D hereof.

Section 3.2 Number of Shares. Subject to Section 3.6(b), the number of Shares to be issued in connection with each Draw Down shall be equal to the sum of the number of shares issuable on each Trading Day of the Draw Down Pricing Period. Subject to Section 3.6(b), the number of shares issuable on a Trading Day during a Draw Down Pricing Period shall be equal to the quotient of one eighth (1/8th) of the Draw Down Amount divided by the Draw Down Discount Price for such Trading Day.

Section 3.3 Limitation on Draw Downs. Only one Draw Down shall be permitted for each Draw Down Pricing Period.

Section 3.4 Trading Cushion. Unless the parties agree in writing otherwise, there shall be a minimum of three (3) Trading Days between the expiration of any Draw Down Pricing Period and the beginning of the next succeeding Draw Down Pricing Period.

Section 3.5 Settlement. Subject to Section 3.6(b), the number of Shares purchased by the Investor in any Draw Down shall be determined and settled on two separate dates. Shares purchased by the Investor during the first four Trading Days of any Draw Down Pricing Period shall be determined and settled no later than the sixth Trading Day of such Draw Down Pricing Period. Shares purchased by the Investor during the second four Trading Days of any Draw Down Pricing Period shall be determined and settled no later than the second Trading Day after the last Trading Day of such Draw Down Pricing Period. Each date on which settlement of the purchase and sale of Shares occurs hereunder being referred to as a "Settlement Date." The Investor shall provide the Company with delivery instructions for the Shares to be issued at each Settlement Date at least two Trading Days in advance of such Settlement Date. The number of Shares actually issued shall be rounded to the nearest whole number of Shares.

Section 3.6 Delivery of Shares; Payment of Draw Down Amount.

(a) On each Settlement Date, the Company shall deliver the Shares purchased by the Investor to the Investor or its designees exclusively via book-entry through the DTC to an account designated by the Investor, and upon receipt of the Shares, the Investor shall cause payment thereof to be made to the Company's designated account by wire transfer of immediately available funds, if the Shares are received by the Investor no later than 1:00 p.m. (Eastern Time), or next day available funds, if the Shares are received thereafter. Upon the written request of the Company, the Investor will cause its banker to confirm to the Company that the Investor has provided irrevocable instructions to cause payment for the Shares to be made as set forth above, upon confirmation by such banker that the Shares have been delivered through the DTC in unrestricted form.

(b) For each Trading Day during a Draw Down Pricing Period on which the VWAP is less than the greater of (i) 90% of the Closing Price of the Company's Common Stock on the Trading Day immediately preceding the commencement of such Draw Down Pricing Period, or (ii) $1.15, such Trading Day shall not be used in calculating the number of Shares to be issued in connection with such Draw Down, and the Draw Down Amount in respect of such Draw Down Pricing Period shall be reduced by one eighth (1/8th) of the initial Draw Down Amount specified in the Draw Down Notice. If trading in the Company's Common Stock is suspended for any reason for more than three (3) consecutive or non-consecutive hours during any Trading Day during a Draw Down Pricing Period, such Trading Day shall not be used in calculating the number of Shares to be issued in connection with such Draw Down, and the Draw Down Amount in respect of such Draw Down Pricing Period shall be reduced by one eighth (1/8th) of the initial Draw Down Amount specified in the Draw Down Notice.

Section 3.7 Failure to Deliver Shares. If on any Settlement Date, the Company fails to take all actions within the reasonable control of the Company to cause the delivery of the Shares purchased by the Investor, and such failure is not cured within two (2) Trading Days following such Settlement Date, the Company shall pay to the Investor on demand in cash by wire transfer of immediately available funds to an account designated by the Investor the "Make Whole Amount;" provided, however, that in the event that the Company is prevented from delivering Shares in respect of any such Settlement Date in a timely manner by any fact or circumstance that is not reasonably within the control of, or directly attributable to, the Company, or is otherwise reasonably within the control of, or directly attributable to, the Investor, then such two (2) Trading Day period shall be automatically extended until such time as such fact or circumstance is cured. As used herein, the Make Whole Amount shall be an amount equal to the sum of (i) the Draw Down Amount actually paid by the Investor in respect of such Shares plus (ii) an amount equal to the actual loss suffered by the Investor in respect of sales to subsequent purchasers, pursuant to transactions entered into before the Settlement Date, of the Shares that were required to be delivered by the Company, which shall be based upon documentation reasonably satisfactory to the Company demonstrating the difference (if greater than zero) between (A) the price per share paid by the Investor to purchase such number of shares of Common Stock necessary for the Investor to meet its share delivery obligations to such subsequent purchasers minus (B) the average Draw Down Discount Price during the applicable Draw Down Pricing Period in respect of such Settlement Date. In the event that the Make Whole Amount is not paid within two (2) Trading Days following a demand therefor from the Investor, the Make Whole Amount shall accrue interest compounded daily at a rate of LIBOR plus 300 basis points, per annum up to and including the date on which the Make Whole Amount is actually paid. For the purposes of this Section 3.7 facts or circumstances that are reasonably within the control of the Company include such facts and circumstances directly attributable to acts or omissions of the Company, its officers, directors, employees, agents and representatives, including, without limitation, any transfer agent(s), accountant(s) and/or attorney(s) engaged by the Company in connection with the Company's performance of its obligations hereunder. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the Company pays the Make Whole Amount (plus interest, if applicable) in respect of any Settlement Date in accordance with this Section 3.7, such payment shall be the Investor's sole remedy in respect of the Company's failure to deliver Shares in respect of such Settlement Date, and the Company shall not be obligated to deliver such Shares.

**ARTICLE IV**
**REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby makes the following representations and warranties to the Investor:

Section 4.1 Organization, Good Standing and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Except as set forth in the Commission Documents (as defined below), as of the date hereof, the Company does not own more than fifty percent (50%) of the outstanding capital stock of or control any other business entity, other than any wholly-owned subsidiary that is not "significant" within the meaning of Regulation S-X promulgated by the Commission. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, other than those in which the failure to be so qualified or be in good standing would not have a Material Adverse Effect.

Section 4.2 Authorization; Enforcement. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement and the Warrant and to issue the Shares, the Warrant, the Warrant Shares and any Blackout Shares (except to the extent that the number of Blackout Shares required to be issued exceeds the number of authorized shares of Common Stock under the Charter); (ii) the execution and delivery of this Agreement and the Registration Rights Agreement, and the execution, issuance and delivery of the Warrant, by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and no further consent or authorization of the Company or its Board of Directors or stockholders is required (other than as contemplated by Section 6.5); and (iii) each of this Agreement and the Registration Rights Agreement has been duly executed and delivered, and the Warrant has been duly executed, issued and delivered, by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, securities, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or indemnification or by other equitable principles of general application.

Section 4.3 Capitalization. The authorized capital stock of the Company and the shares thereof issued and outstanding as of December 31, 2007 are set forth in a Commission Document. All of the outstanding shares of the Common Stock have been duly and validly authorized and issued, and are fully paid and non-assessable. Except as set forth in this Agreement, as described in the Commission Documents or as disclosed on a schedule (the "Disclosure Schedule") previously delivered to the Investor, as of December 31, 2007, no shares of Common Stock were entitled to preemptive rights or registration rights and there were no outstanding options, warrants, scrip, rights issued by the Company to subscribe to, call or commitments of any character whatsoever issued by the Company relating to, or securities or rights convertible into or exchangeable for or giving any right to subscribe for, any shares of capital stock of the Company, except for stock options and restricted stock units issued by the Company to its employees, directors and consultants. Except as set forth in this Agreement, the Commission Documents, or as previously disclosed to the Investor in the Disclosure Schedule, as of December 31, 2007, there were no contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, securities or rights convertible into or exchangeable for or giving any right to subscribe for any shares of capital stock of the Company. Except as described in the Commission Documents or as previously disclosed to the Investor in the Disclosure Schedule, as of the date hereof the Company is not a party to any agreement granting registration rights to any Person with respect to any of its equity or debt securities. Except as set forth in the Commission Documents or as previously disclosed to the Investor in the Disclosure Schedule, as of the date hereof the Company is not a party to, and it has no Knowledge of, any agreement restricting the voting or transfer of any shares of the capital stock of the Company. The offer and sale of all capital stock, convertible securities, rights, warrants, or options of the Company issued during the twenty-four month period immediately prior to the Closing complied in all material respects with all applicable federal and state securities laws, and no stockholder has a right of rescission or damages with respect thereto that would reasonably be expected to have a Material Adverse Effect. The Company has furnished or made available to the Investor true and correct copies of the Company's Restated Certificate of Incorporation, as amended and in effect on the date hereof (the "Charter"), and the Company's Amended and Restated Bylaws, as amended and in effect on the date hereof (the "Bylaws").

Section 4.4 Issuance of Shares. Subject to Section 6.5, the Shares, the Warrant and the Warrant Shares have been, and any Blackout Shares will be, duly authorized by all necessary corporate action (except to the extent that the number of Blackout Shares required to be issued exceeds the number of authorized shares of Common Stock under the Charter) and, when issued and paid for in accordance with the terms of this Agreement, the Registration Rights Agreement and the Warrant, and subject to, and in reliance on, the representations, warranties and covenants made herein by the Investor, the Shares and the Warrant Shares shall be validly issued and outstanding, fully paid and non-assessable, and the Investor shall be entitled to all rights accorded to a holder of shares of Common Stock.

Section 4.5 No Conflicts. The execution, delivery and performance of this Agreement, the Registration Rights Agreement, the Warrant and any other document or instrument contemplated hereby or thereby, by the Company and the consummation by the Company of the transactions contemplated hereby and thereby do not and shall not in any material respect: (i) result in the violation of any provision of the Charter or Bylaws, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company is a party where such default or conflict would constitute a Material Adverse Effect, (iii) create or impose a lien, charge or encumbrance on any property of the Company under any agreement or any commitment to which the Company is a party or by which the Company is bound or by which any of its respective properties or assets are bound which would constitute a Material Adverse Effect, (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, writ, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or any of its subsidiaries or by which any property or asset of the Company or any of its subsidiaries are bound where such violation would constitute a Material Adverse Effect, or (v) require any consent of any third-party that has not been obtained pursuant to any material contract to which the Company is a party or to which any of its assets, operations or management may be bound where the failure to obtain any such consent would constitute a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement, the Registration Rights Agreement or the Warrant, or issue and sell the Shares, the Warrant Shares or the Blackout Shares (except to the extent that the number of Blackout Shares required to be issued exceeds the number of authorized shares of Common Stock under the Charter) in accordance with the terms hereof and thereof (other than any filings that may be required to be made by the Company with the Commission, the FINRA, Nasdaq or state securities commissions subsequent to the Closing, and, any registration statement (including any amendment or supplement thereto) or any other filing or consent which may be filed pursuant to this Agreement, the Registration Rights Agreement or the Warrant); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Investor herein.

Section 4.6 Commission Documents, Financial Statements.

(a) The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and since June 1, 2007 the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission pursuant to the reporting requirements of the Exchange Act, including material filed pursuant to Section 13(a) or 15(d) of the Exchange Act (all of the foregoing, including filings incorporated by reference therein, being referred to herein as the "Commission Documents"). Except as previously disclosed to the Investor in writing, since June 1, 2007 the Company has maintained all requirements for the continued listing or quotation of its Common Stock, and such Common Stock is currently listed or quoted on the NASDAQ Global Market. The Company has made available (including through the Commission's EDGAR filing system) to the Investor true and complete copies of the Commission Documents filed with the Commission since June 1, 2007 and prior to the Closing Date. The Company has not provided to the Investor any information which, according to applicable law, rule or regulation, should have been disclosed publicly by the Company but which has not been so disclosed, other than with respect to the transactions contemplated by this Agreement. As of its date, the Company's Annual Report on Form 10-K for the year ended December 31, 2007 complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder applicable to such document, and, as of its date, after giving effect to the information disclosed and incorporated by reference therein, to the Company's Knowledge such Annual Report on Form 10-K 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. As of their respective dates, to the Company's Knowledge the financial statements, together with the related notes and schedules thereto, of the Company included in the Commission Documents filed with the Commission since June 1, 2007 complied as to form and substance in all material respects with all applicable accounting requirements and the published rules and regulations of the Commission or other applicable rules and regulations with respect thereto. Such financial statements, together with the related notes and schedules thereto, have been prepared in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements), and fairly present in all material respects the financial condition of the Company and its subsidiaries as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(b) The Company has timely filed with the Commission and made available to the Investor via EDGAR or otherwise all certifications and statements required by (x) Rule 13a-14 or Rule 15d-14 under the Exchange Act or (y) 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002 ("SOXA")) with respect to all relevant Commission Documents. The Company is in compliance in all material respects with the provisions of SOXA applicable to it as of the date hereof. The Company maintains disclosure controls and procedures required by Rule 13a-15 or Rule 15d-15 under the Exchange Act. As used in this Section 4.6(b), the term "file" shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the Commission.

Section 4.7 No Material Adverse Change. Except as disclosed in the Commission Documents or a press release of the Company, since December 31, 2007 no event or series of events has or have occurred that, individually or in the aggregate, have had a Material Adverse Effect on the Company.

Section 4.8 No Undisclosed Liabilities. Except as disclosed in the Commission Documents, to the Company's Knowledge, neither the Company nor any of its subsidiaries has any liabilities, obligations, claims or losses (whether liquidated or unliquidated, secured or unsecured, absolute, accrued, contingent or otherwise) that would be required to be disclosed on a balance sheet of the Company or any subsidiary (including the notes thereto) in conformity with GAAP and are not disclosed in the Commission Documents, other than those incurred in the ordinary course of the Company's or its subsidiaries respective businesses since December 31, 2007 or which, individually or in the aggregate, do not or would not have a Material Adverse Effect on the Company.

Section 4.9 No Undisclosed Events or Circumstances. To the Company's Knowledge, no event or circumstance has occurred or exists with respect to the Company or its subsidiaries or their respective businesses, properties, operations or financial condition, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed and which, individually or in the aggregate, would have a Material Adverse Effect on the Company.

Section 4.10 Actions Pending. There is no action, suit, claim, investigation or proceeding pending or, to the Knowledge of the Company, threatened against the Company or any subsidiary which questions the validity of this Agreement or the transactions contemplated hereby or any action taken or to be taken pursuant hereto or thereto. Except as set forth in the Commission Documents or in the Disclosure Schedule, there is no material action, suit, claim, investigation or proceeding pending or, to the Knowledge of the Company, threatened, against or involving the Company, any subsidiary or any of their respective properties or assets, or to the Knowledge of the Company involving any officers or directors, in their capacity as officers or directors, of the Company or any of its subsidiaries, including, without limitation, any securities class action lawsuit or stockholder derivative lawsuit, that could be reasonably expected to have a Material Adverse Effect on the Company. Except as set forth in the Commission Documents or as previously disclosed to the Investor in writing, no judgment, order, writ, injunction or decree or award has been issued by or, to the Knowledge of the Company, requested of any court, arbitrator or governmental agency which could be reasonably expected to result in a Material Adverse Effect.

Section 4.11 Compliance with Law. The business of the Company and its subsidiaries has been and is presently being conducted in accordance with all applicable federal, state, local and foreign governmental laws, rules, regulations and ordinances, except as set forth in the Commission Documents or such that would not reasonably be expected to cause a Material Adverse Effect. Except as set forth in the Commission Documents, each of the Company and each of its subsidiaries has all franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals necessary for the conduct of its business as now being conducted by it, except for such franchises, permits, licenses, consents and other governmental or regulatory authorizations and approvals, the failure to possess which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 4.12 Certain Fees. Except as expressly set forth in this Agreement, no brokers, finders or financial advisory fees or commissions will be payable by the Company or any of its subsidiaries in respect of the transactions contemplated by this Agreement.

Section 4.13 Disclosure. To the Company's Knowledge, neither this Agreement nor any other documents, certificates or instruments furnished to the Investor by or on behalf of the Company or any subsidiary in connection with the transactions contemplated by this Agreement contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made herein or therein, in the light of the circumstances under which they were made herein or therein, not misleading.

Section 4.14 Material Non-Public Information. Except for this Agreement and the transactions contemplated hereby, neither the Company nor its employees have disclosed to the Investor, any material non-public information that, according to applicable law, rule or regulation, should have been disclosed publicly by the Company prior to the date hereof but which has not been so disclosed.

Section 4.15 Exemption from Registration; Valid Issuances. Subject to, and in reliance on, the representations, warranties and covenants made herein by the Investor, the issuance and sale of the Shares, the Warrant, the Warrant Shares and any Blackout Shares in accordance with the terms and on the bases of the representations and warranties set forth in this Agreement, may and shall be properly issued pursuant to Section 4(2), Regulation D and/or any other applicable federal and state securities laws. Neither the sales of the Shares, the Warrant, the Warrant Shares or any Blackout Shares pursuant to, nor the Company's performance of its obligations under, this Agreement, the Registration Rights Agreement, or the Warrant shall (i) result in the creation or imposition of any liens, charges, claims or other encumbrances upon the Shares, the Warrant Shares, any Blackout Shares or any of the assets of the Company, or (ii) except as previously disclosed to the Investor in the Disclosure Schedule, entitle the holders of any outstanding shares of capital stock of the Company to preemptive or other rights to subscribe to or acquire the shares of Common Stock or other securities of the Company.

Section 4.16 No General Solicitation or Advertising in Regard to this Transaction. Except for the Registration Statement, neither the Company nor any of its affiliates or any Person acting on its or their behalf (i) has conducted any general solicitation (as that term is used in Rule 502(c) of Regulation D) or general advertising with respect to any of the Shares, the Warrant, the Warrant Shares or any Blackout Shares or (ii) has made any offers or sales of any security or solicited any offers to buy any security under any circumstances that would require registration of the Shares under the Securities Act.

Section 4.17 No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration under the Securities Act of shares of the Common Stock issuable hereunder with any other offers or sales of securities of the Company.

Section 4.18 Acknowledgment Regarding Investor's Purchase of Shares. The Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length investor with respect to this Agreement and the transactions contemplated hereunder. The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereunder and any advice given by the Investor or any of its representatives or agents in connection with this Agreement and the transactions contemplated hereunder is merely incidental to the Investor's purchase of the Shares.

## ARTICLE V
## REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE INVESTOR

The Investor hereby makes the following representations, warranties and covenants to the Company:

Section 5.1 Organization and Standing of the Investor. The Investor is a company duly organized, validly existing and in good standing under the laws of the British Virgin Islands.

Section 5.2 Authorization and Power. The Investor has the requisite power and authority to enter into and perform its obligations under this Agreement, the Warrant and the Registration Rights Agreement and to purchase the Shares, any Blackout Shares, the Warrant and the Warrant Shares in accordance with the terms hereof and thereof. The execution, delivery and performance of this Agreement, the Warrant and the Registration Rights Agreement by Investor and the consummation by it of the transactions contemplated hereby or thereby have been duly authorized by all necessary corporate action, and no further consent or authorization of the Investor, its Board of Directors or stockholders is required. Each of this Agreement and the Registration Rights Agreement has been duly executed and delivered by the Investor and constitutes a valid and binding obligation of the Investor enforceable against the Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, securities, insolvency, reorganization, moratorium, liquidation, conservatorship, receivership, or similar laws relating to, or affecting generally the enforcement of creditor's rights and remedies or indemnification or by other equitable principles of general application.

Section 5.3 No Conflicts. The execution, delivery and performance of this Agreement, the Registration Rights Agreement, the Warrant and any other document or instrument contemplated hereby, by the Investor and the consummation of the transactions contemplated thereby do not (i) violate any provision of the Investor's charter documents or bylaws, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Investor is a party, (iii) create or impose a lien, charge or encumbrance on any property of the Investor under any agreement or any commitment to which the Investor is a party or by which the Investor is bound or by which any of its respective properties or assets are bound, (iv) result in a violation of any federal, state, local or foreign statute, rule, regulation, order, writ, judgment or decree (including federal and state securities laws and regulations) applicable to the Investor or by which any property or asset of the Investor are bound or affected, or (v) require the consent of any third-party that has not been obtained pursuant to any material contract to which Investor is subject or to which any of its assets, operations or management may be subject. The Investor is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement or to purchase or acquire the Shares, the Warrant, the Warrant Shares or any Blackout Shares in accordance with the terms hereof, provided that, for purposes of the representation made in this sentence, the Investor is assuming and relying upon the accuracy of the relevant representations and agreements of the Company herein.

Section 5.4 Financial Capability. The Investor has the financial capability to perform all of its obligations under this Agreement, including the capability to purchase the Shares, the Warrant, the Warrant Shares and any Blackout Shares in accordance with the terms hereof. The Investor has such knowledge and experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in Common Stock and the Warrant. The Investor is an "accredited investor" as defined in Regulation D. The Investor is a "sophisticated investor" as described in Rule 506(b)(2)(ii) of Regulation D. The Investor acknowledges that an investment in the Common Stock and the Warrant is speculative and involves a high degree of risk.

Section 5.5 Information. The Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Shares, any Blackout Shares, the Warrant and the Warrant Shares which have been requested by the Investor. The Investor has reviewed or received copies of the Commission Documents. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company. The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Shares, any Blackout Shares, the Warrant and the Warrant Shares. The Investor understands that it (and not the Company) shall be responsible for its own tax liabilities that may arise as a result of this investment or the transactions contemplated by this Agreement.

Section 5.6 Trading Restrictions. The Investor covenants that during the Commitment Period, neither the Investor nor any of its affiliates nor any entity managed or controlled by the Investor will enter into or execute or cause or assist any Person to enter into or execute any "short sale" (as such term is defined in Rule 200 of Regulation SHO, or any successor regulation, promulgated by the Commission under the Exchange Act) of any securities of the Company.

Section 5.7 Statutory Underwriter Status. The Investor acknowledges that, pursuant to the Commission's current interpretations of the Securities Act, the Investor will be disclosed as an "underwriter" within the meaning of the Securities Act in the Registration Statement (and amendments thereto) and in any Prospectus contained therein to the extent required by applicable law.

Section 5.8 Not an Affiliate. The Investor is not an officer, director or "affiliate" (as defined in Rule 405 of the Securities Act) of the Company.

Section 5.9 Manner of Sale. At no time was Investor presented with or solicited by or through any leaflet, public promotional meeting, television advertisement or any other form of general solicitation or advertising.

Section 5.10 Prospectus Delivery. The Investor agrees that unless the Shares, the Warrant Shares or any Blackout Shares are eligible for resale pursuant to all the conditions of Rule 144, it will resell the Shares, the Warrant Shares and any Blackout Shares only pursuant to the Registration Statement, in a manner described under the caption "Plan of Distribution" in the Registration Statement, and in a manner in compliance with all applicable securities laws, including, without limitation, any applicable prospectus delivery requirements of the Securities Act and the insider trading restrictions of the Exchange Act. The Investor acknowledges and agrees that the Company shall be under no obligation to the Investor to supplement the Prospectus to reflect the issuance of any Shares pursuant to a Draw Down at any time prior to the day following the second Settlement Date with respect to such Draw Down.

## ARTICLE VI
## COVENANTS OF THE COMPANY

The Company covenants with the Investor as follows, which covenants are for the benefit of the Investor and its permitted assignees (as defined herein):

Section 6.1 Securities Compliance. The Company shall notify the Commission and the Principal Market, if and as applicable, in accordance with their respective rules and regulations, of the transactions contemplated by this Agreement, and shall use commercially reasonable efforts to take all other necessary action and proceedings as may be required and permitted by applicable law, rule and regulation, for the legal and valid issuance of the Shares, the Warrant Shares and the Blackout Shares, if any, to the Investor. Each Commission Document to be filed with the Commission after the Closing Date and incorporated by reference in the Registration Statement and Prospectus, when such document becomes effective or is filed with the Commission, as the case may be, shall comply in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it, and shall 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.

Section 6.2 Reservation of Common Stock. As of the date hereof, the Company has available and the Company shall reserve and keep available at all times, free of preemptive rights and other similar contractual rights of stockholders, shares of Common Stock for the purpose of enabling the Company to satisfy any obligation to issue the Shares in connection with all Draw Downs contemplated hereunder and the Warrant Shares. The number of shares so reserved from time to time, as theretofore increased or reduced as hereinafter provided, may be reduced by the number of shares actually delivered hereunder.

Section 6.3 Registration and Listing. During the Commitment Period, the Company shall use commercially reasonable efforts to: (i) take all action necessary to cause its Common Stock to continue to be registered under Section 12(b) or 12(g) of the Exchange Act, (ii) comply in all material respects with its reporting and filing obligations under the Exchange Act, (iii) prevent the termination or suspension of such registration, or the termination or suspension of its reporting and filing obligations under the Exchange Act or Securities Act (except as expressly permitted herein). The Company shall use commercially reasonable efforts to maintain the listing and trading of its Common Stock and the listing of the Shares purchased by Investor hereunder on the Principal Market (including, without limitation, maintaining sufficient net tangible assets) and will comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of the FINRA and the Principal Market. The Company will not be required to carry out any action pursuant to this Agreement, the Registration Rights Agreement or the Warrant that would adversely impact the listing of the Company's securities on the Principal Market, which Principal Market may be changed by the Company in the future in the Company's discretion.

Section 6.4 Registration Statement. Without the prior written consent of the Investor, the Registration Statement shall be used solely in connection with the transactions between the Company and the Investor contemplated hereby.

Section 6.5 Compliance with Laws.

(a) The Company shall comply, and cause each subsidiary to comply, with all applicable laws, rules, regulations and orders, noncompliance with which would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, neither the Company nor any of its officers, directors or affiliates will take, directly or indirectly, any action designed or intended to stabilize or manipulate the price of any security of the Company, or which would in the future reasonably be expected to cause or result in, stabilization or manipulation of the price of any security of the Company.

(b) Without the consent of its stockholders in accordance with FINRA and The NASDAQ Stock Market LLC rules, the Company will not be obligated to issue, and the Investor will not be obligated to purchase, any Shares or Blackout Shares which would result in the issuance under this Agreement, the Warrant and the Registration Rights Agreement of Shares, Warrant Shares and Blackout Shares (collectively) representing more than the applicable percentage under the rules of the FINRA and The NASDAQ Stock Market LLC , including, without limitation, NASDAQ Marketplace Rule 4350(i), that would require stockholder approval of the issuance thereof. Nothing herein shall compel the Company to seek such consent of its stockholders. In addition, the Company will not be obligated to issue, and the Investor will not be obligated to purchase, any Shares, Warrant Shares or Blackout Shares if as a result of the acquisition of such Shares, Warrant Shares and/or Blackout Shares, the Company would be required to file any notification or report forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Nothing herein shall compel the Company to file such notification and report forms.

Section 6.6 Other Financing. Nothing in this Agreement shall be construed to restrict the right of the Company to offer, sell and/or issue securities of any kind whatsoever, provided such transaction is not a Prohibited Transaction (as defined below) (any such transaction that is not a Prohibited Transaction is referred to in this Agreement as a "Permitted Transaction"). Without limiting the generality of the preceding sentence, the Company may, without the prior written consent of the Investor, (i) establish stock option or award plans or agreements (for directors, employees, consultants and/or advisors), and issue securities thereunder, and amend such plans or agreements, including increasing the number of shares available thereunder, (ii) issue equity securities to finance, or otherwise in connection with, the acquisition of one or more other companies, equipment, technologies or lines of business, (iii) issue shares of Common Stock and/or Preferred Stock in connection with the Company's option or award plans, stock purchase plans, stock bonus programs, rights plans, warrants or options, (iv) issue shares of Common Stock and/or Preferred Stock in connection with the acquisition of products, licenses, equipment or other assets and strategic collaborations or partnerships or joint ventures; (v) issue shares of Common and/or Preferred Stock to employees, consultants and/or advisors as consideration for services rendered or to be rendered, (vi) issue and sell equity or debt securities in a public offering, (vii) issue and sell and equity or debt securities in a private placement (other than in connection with any Prohibited Transaction), (viii) issue equity securities to equipment lessors, equipment vendors, banks or similar lending institutions in connection with leases or loans, or in connection with strategic commercial or licensing transactions, (ix) issue securities in connection with any stock split, stock dividend, recapitalization, reclassification or similar event by the Company, and (x) issue shares of Common Stock to the Investor under any other agreement entered into between the Investor and the Company.

Section 6.7 Prohibited Transactions. Except as set forth on Schedule 6.7 of the Disclosure Schedule, during the term of this Agreement, the Company shall not enter into any Prohibited Transaction without the prior written consent of the Investor, which consent may be withheld at the sole discretion of the Investor. For the purposes of this Agreement, the term "Prohibited Transaction" shall refer to the issuance by the Company of any "future priced securities," which shall mean the issuance of shares of Common Stock or securities of any type whatsoever that are, or may become, convertible or exchangeable into shares of Common Stock where the purchase, conversion or exchange price for such Common Stock is determined using any floating discount or other post-issuance adjustable discount to the market price of Common Stock, including, without limitation, pursuant to any equity line or other financing that is substantially similar to the financing provided for under this Agreement, provided that any future issuance by the Company of a convertible security ("Convertible Security") that contains provisions that adjust the conversion price of such Convertible Security in the event of stock splits, dividends, distributions or similar events or pursuant to anti-dilution provisions shall not be a Prohibited Transaction.

Section 6.8 Corporate Existence. The Company shall take all steps necessary to preserve and continue the corporate existence of the Company; provided, however, that nothing in this Agreement shall be deemed to prohibit the Company from engaging in any Excluded Merger or Sale with another Person, subject to the terms of the Warrant.

Section 6.9 Non-Disclosure of Non-Public Information. Except as otherwise expressly provided in this Agreement, the Registration Rights Agreement or the Warrant, none of the Company, its officers, directors, employees nor agents shall disclose material non-public information to the Investor, its advisors or representatives.

Section 6.10 Notice of Certain Events Affecting Registration; Suspension of Right to Request a Draw Down. The Company shall promptly notify the Investor upon the occurrence of any of the following events in respect of the Registration Statement or the Prospectus related to the offer, issuance and sale of the Shares and the Warrant Shares hereunder: (i) receipt of any request for material additional information by the Commission or any other federal or state governmental authority or for amendments or supplements to the Registration Statement or the Prospectus during the period of effectiveness of the Registration Statement; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and (iv) the Company becoming aware of the happening of any event, which makes any statement of a material fact made in the Registration Statement or Prospectus untrue in a material respect or which requires the making of any material additions to or material changes to the statements then made in the Registration Statement or Prospectus in order to state a material fact required by the Securities Act to be stated therein or necessary in order to make the statements then made therein, in light of the circumstances under which they were made, not misleading, or of the necessity to amend the Registration Statement or supplement the Prospectus to comply with the Securities Act. If at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Company shall use commercially reasonable efforts to obtain the withdrawal of such order at the earliest possible time. The Company shall not be required to disclose to the Investor the substance or specific reasons of any of the events set forth in clauses (i) through (iv) of the previous sentence, only that the event has occurred. The Company shall not request a Draw Down during the continuation of any of the foregoing events.

Section 6.11 Amendments to the Registration Statement. After the Registration Statement has been declared effective by the Commission, the Company shall not (a) file any amendment to the Registration Statement or make any amendment or supplement to the Prospectus of which the Investor shall not have been previously or be simultaneously advised; provided, however, that the Company may, to the extent it deems advisable, and without the prior consent of or notice to Investor, supplement the Prospectus within one Trading Day following the second Settlement Date for each Draw Down solely to reflect the issuance of Shares with respect to such Draw Down, and (b) so long as, in the reasonable opinion of counsel for the Investor, a Prospectus is required to be delivered in connection with sales of the Shares by the Investor, if the Company files any information, documents or reports that are incorporated by reference in the Registration Statement pursuant to the Exchange Act, the Company shall, if requested in writing by the Investor, deliver a copy of such information, documents or reports to the Investor promptly following such filing.

Section 6.12 Prospectus Delivery. From time to time for such period as in the reasonable opinion of counsel for the Investor a prospectus is required by the Securities Act to be delivered in connection with sales by the Investor, the Company will expeditiously deliver to the Investor, without charge, as many copies of the Prospectus (and of any amendment or supplement thereto) as the Investor may reasonably request. Subject to the Registration Rights Agreement, the Company consents to the use of the Prospectus (and of any amendment or supplement thereto) in accordance with the provisions of the Securities Act and state securities laws in connection with the offering and sale of the Shares and the Warrant Shares and for such period of time thereafter as the Prospectus is required by the Securities Act to be delivered in connection with sales of the Shares and the Warrant Shares. Notwithstanding the foregoing, in no event shall the Company be under any obligation to the Investor to supplement the Prospectus or to reflect the issuance of any Shares pursuant to a Draw Down or deliver any Prospectus as so supplemented at any time prior to the Trading Day following the second Settlement Date with respect to such Draw Down.

**ARTICLE VII**
**CONDITIONS TO THE OBLIGATION OF THE INVESTOR**
**TO ACCEPT A DRAW DOWN**

The obligation of the Investor hereunder to accept a Draw Down Notice and to acquire and pay for the Shares in accordance therewith is subject to the satisfaction or waiver, at each Condition Satisfaction Date, of each of the conditions set forth below. Other than those conditions set forth in Section 7.12 which are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion, the conditions are for the Investor's sole benefit and may be waived by the Investor at any time in its sole discretion. As used in this Agreement, the term "Condition Satisfaction Date" shall mean, with respect to each Draw Down, the date on which the applicable Draw Down Notice is delivered to the Investor and each Settlement Date in respect of the applicable Draw Down Pricing Period.

Section 7.1 Accuracy of the Company's Representations and Warranties. Each of the representations and warranties of the Company shall be true and correct in all material respects as of the date when made as though made at that time except for representations and warranties that are expressly made as of a particular date.

Section 7.2 Performance by the Company. The Company shall have, in all material respects, performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement, the Registration Rights Agreement and the Warrant to be performed, satisfied or complied with by the Company.

Section 7.3 Compliance with Law. The Company shall have complied in all respects with all applicable federal, state and local governmental laws, rules, regulations and ordinances in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby except for any failures to so comply which could not reasonably be expected to have a Material Adverse Effect.

Section 7.4 Effective Registration Statement. Upon the terms and subject to the conditions set forth in the Registration Rights Agreement, the Registration Statement shall have previously become effective and shall remain effective and (i) neither the Company nor the Investor shall have received notice that the Commission has issued or intends to issue a stop order with respect to the Registration Statement or that the Commission otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or intends or has threatened to do so (unless the Commission's concerns have been addressed and the Investor is reasonably satisfied that the Commission no longer is considering or intends to take such action), and (ii) no other suspension of the use or withdrawal of the effectiveness of the Registration Statement or the Prospectus shall exist.

Section 7.5 No Knowledge. The Company shall have no Knowledge of any event that could reasonably be expected to have the effect of causing the Registration Statement with respect to the resale of the Registrable Securities by the Investor to be suspended or otherwise ineffective (which event is reasonably likely to occur within eight Trading Days following the Trading Day on which a Draw Down Notice is delivered) as of the Settlement Date.

Section 7.6 No Suspension. Trading in the Company's Common Stock shall not have been suspended by the Commission, the Principal Market or the FINRA and trading in securities generally as reported on the Principal Market shall not have been suspended or limited as of the Condition Satisfaction Date.

Section 7.7 No Injunction. No statute, rule, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, endorsed or, to the Knowledge of the Company, threatened by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by this Agreement.

Section 7.8 No Proceedings or Litigation. No action, suit or proceeding before any arbitrator or any court or governmental authority shall be pending or, to the Knowledge of the Company, threatened, and, to the Knowledge of the Company no inquiry or investigation by any governmental authority shall be threatened, against the Company or any subsidiary, or any of the officers, directors or affiliates of the Company or any subsidiary, seeking to enjoin, prevent or change the transactions contemplated by this Agreement, or seeking material damages in connection with such transactions, except for any action, suit or proceeding which could not reasonably be expected to have a Material Adverse Effect.

Section 7.9 Sufficient Shares Registered for Resale. The Company shall have sufficient Shares, calculated using the closing trade price of the Common Stock as of the Trading Day immediately preceding such Draw Down Notice, registered under the Registration Statement to issue and sell such Shares in accordance with such Draw Down Notice.

Section 7.10 Warrant. The Warrant shall have been duly executed, delivered and issued to the Investor, and the Company shall not be in default in any material respect under any of the provisions thereof, provided that any refusal by or failure of the Company to issue and deliver Warrant Shares in respect of any exercise (in whole or in part) thereof shall be deemed to be material for the purposes of this Section 7.10.

Section 7.11 Opinion of Counsel. The Investor shall have received the form of opinion mutually agreed to between the parties on the date of this Agreement.

Section 7.12 Accuracy of Investor's Representation and Warranties. The representations and warranties of the Investor shall be true and correct in all material respects as of the date when made as though made at that time except for representations and warranties that are made as of a particular date.

**ARTICLE VIII**
**TERMINATION**

Section 8.1 Term. Unless otherwise terminated in accordance with Section 8.2 below, this Agreement shall terminate upon the earlier to occur of (i) the expiration of the Commitment Period or (ii) the issuance of Shares pursuant to this Agreement in an amount equal to the Maximum Commitment Amount.

Section 8.2 Other Termination.

(a) The Investor may terminate this Agreement upon (x) one (1) Trading Day's notice if the Company enters into any Prohibited Transaction as set forth in Section 6.7 without the Investor's prior written consent, or (y) one (1) Trading Day's notice if the Investor provides written notice of a Material Adverse Effect to the Company, and such Material Adverse Effect continues for a period of ten (10) Trading Days after the receipt by the Company of such notice.

(b) The Investor may terminate this Agreement upon one (1) Trading Day's notice to the Company at any time in the event that the Registration Statement is not initially declared effective in accordance with the Registration Rights Agreement, provided, however, that in the event the Registration Statement is declared effective prior to the delivery of such notice, the Investor shall thereafter have no right to terminate this Agreement pursuant to this Section 8.2(b).

(c) The Company may terminate this Agreement upon one (1) Trading Day's notice; provided, however, that the Company shall not terminate this Agreement pursuant to this Section 8.2(c) during any Draw Down Pricing Period; provided further, that, in the event of any termination of this Agreement by the Company hereunder, so long as the Investor owns Shares purchased hereunder and/or Warrant Shares, unless all of such shares of Common Stock may be resold by the Investor without registration and without any time, volume or manner limitations pursuant to Rule 144(k) (or any similar provision then in effect) under the Securities Act, the Company shall not suspend or withdraw the Registration Statement or otherwise cause the Registration Statement to become ineffective, or voluntarily delist the Common Stock from, the Principal Market without listing the Common Stock on another Principal Market.

(d) Each of the parties hereto may terminate this Agreement upon one (1) Trading Day's notice if the other party has breached a material representation, warranty or covenant to this Agreement and such breach is not remedied within ten (10) Trading Days after notice of such breach is delivered to the breaching party.

Section 8.3 Effect of Termination. In the event of termination by the Company or the Investor, written notice thereof shall forthwith be given to the other party and the transactions contemplated by this Agreement shall be terminated without further action by either party. If this Agreement is terminated as provided in Section 8.1 or 8.2 herein, this Agreement shall become void and of no further force and effect, except as provided in Section 10.13. Nothing in this Section 8.3 shall be deemed to release the Company or the Investor from any liability for any breach under this Agreement occurring prior to such termination, or to impair the rights of the Company and the Investor to compel specific performance by the other party of its obligations under this Agreement arising prior to such termination.

**ARTICLE IX**
**INDEMNIFICATION**

Section 9.1 Indemnification.

(a) Except as otherwise provided in this Article IX, unless disputed as set forth in Section 9.2, the Company agrees to indemnify, defend and hold harmless the Investor and its affiliates and their respective officers, directors, agents, employees, subsidiaries, partners, members and controlling persons (each, an "Investor Indemnified Party"), to the fullest extent permitted by law from and against any and all Damages directly resulting from or directly arising out of any breach of any representation or warranty, covenant or agreement (except as otherwise specifically provided) by the Company in this Agreement, the Registration Rights Agreement or the Warrant; provided, however, that the Company shall not be liable under this Article IX to an Investor Indemnified Party to the extent that such Damages resulted or arose from the breach by an Investor Indemnified Party of any representation, warranty, covenant or agreement of an Investor Indemnified Party contained in this Agreement, the Registration Rights Agreement or the Warrant or the negligence, recklessness, willful misconduct or bad faith of an Investor Indemnified Party. The parties intend that any Damages subject to indemnification pursuant to this Article IX will be net of insurance proceeds (which the Investor Indemnified Party agrees to use commercially reasonable efforts to recover). Accordingly, the amount which the Company is required to pay to any Investor Indemnified Party hereunder (a "Company Indemnity Payment") will be reduced by any insurance proceeds actually recovered by or on behalf of any Investor Indemnified Party in reduction of the related Damages. In addition, if an Investor Indemnified Party receives a Company Indemnity Payment required by this Article IX in respect of any Damages and subsequently receives any such insurance proceeds, then the Investor Indemnified Party will pay to the Company an amount equal to the Company Indemnity Payment received less the amount of the Company Indemnity Payment that would have been due if the insurance proceeds had been received, realized or recovered before the Company Indemnity Payment was made.

(b) Except as otherwise provided in this Article IX, unless disputed as set forth in Section 9.2, the Investor agrees to indemnify, defend and hold harmless the Company and its affiliates and their respective officers, directors, agents, employees, subsidiaries, partners, members and controlling persons (each, a "Company Indemnified Party"), to the fullest extent permitted by law from and against any and all Damages directly resulting from or directly arising out of any breach of any representation or warranty, covenant or agreement by the Investor in this Agreement, the Registration Rights Agreement or the Warrant; provided, however, that the Investor shall not be liable under this Article IX to a Company Indemnified Party to the extent that such Damages resulted or arose from the breach by a Company Indemnified Party of any representation, warranty, covenant or agreement of a Company Indemnified Party contained in this Agreement, the Registration Rights Agreement or the Warrant or the negligence, recklessness, willful misconduct or bad faith of a Company Indemnified Party. The parties intend that any Damages subject to indemnification pursuant to this Article IX will be net of insurance proceeds (which the Company agrees to use commercially reasonable efforts to recover). Accordingly, the amount which the Investor is required to pay to any Company Indemnified Party hereunder (an "Investor Indemnity Payment") will be reduced by any insurance proceeds theretofore actually recovered by or on behalf of any Company Indemnified Party in reduction of the related Damages. In addition, if a Company Indemnified Party receives an Investor Indemnity Payment required by this Article IX in respect of any Damages and subsequently receives any such insurance proceeds, then the Company Indemnified Party will pay to the Investor an amount equal to the Investor Indemnity Payment received less the amount of the Investor Indemnity Payment that would have been due if the insurance proceeds had been received, realized or recovered before the Investor Indemnity Payment was made.

Section 9.2 Notification of Claims for Indemnification. Each party entitled to indemnification under this Article IX (an "Indemnified Party") shall, promptly after the receipt of notice of the commencement of any claim against such Indemnified Party in respect of which indemnity may be sought from the party obligated to indemnify such Indemnified Party under this Article IX (the "Indemnifying Party"), notify the Indemnifying Party in writing of the commencement thereof. Any such notice shall describe the claim in reasonable detail. The failure of any Indemnified Party to so notify the Indemnifying Party of any such action shall not relieve the Indemnifying Party from any liability which it may have to such Indemnified Party (a) other than pursuant to this Article IX or (b) under this Article IX unless, and only to the extent that, such failure results in the Indemnifying Party's forfeiture of substantive rights or defenses or the Indemnifying Party is prejudiced by such delay. The procedures listed below shall govern the procedures for the handling of indemnification claims.

(a) Any claim for indemnification for Damages that do not result from a Third Party Claim as defined in the following paragraph, shall be asserted by written notice given by the Indemnified Party to the Indemnifying Party. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30) day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment as set forth in Section 9.1. If such Indemnifying Party does not respond within such thirty (30) day period or rejects such claim in whole or in part, the Indemnified Party shall be free to pursue such remedies as specified in this Agreement.

(b) If an Indemnified Party shall receive notice or otherwise learn of the assertion by a person or entity not a party to this Agreement of any threatened legal action or claim (collectively a "Third Party Claim"), with respect to which an Indemnifying Party may be obligated to provide indemnification, the Indemnified Party shall give such Indemnifying Party written notice thereof within twenty (20) days after becoming aware of such Third Party Claim.

(c) An Indemnifying Party may elect to defend (and, unless the Indemnifying Party has specified any reservations or exceptions, to seek to settle or compromise) at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, any Third Party Claim. Within thirty (30) days after the receipt of notice from an Indemnified Party (or sooner if the nature of such Third Party Claim so requires), the Indemnifying Party shall notify the Indemnified Party whether the Indemnifying Party will assume responsibility for defending such Third Party Claim, which election shall specify any reservations or exceptions. If such Indemnifying Party does not respond within such thirty (30) day period or rejects such claim in whole or in part, the Indemnified Party shall be free to pursue such remedies as specified in this Agreement. In case any such Third Party Claim shall be brought against any Indemnified Party, and it shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense at its own expense. Notwithstanding the foregoing, in any Third Party Claim in which both the Indemnifying Party, on the one hand, and an Indemnified Party, on the other hand, are, or are reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel and to control its own defense of such claim if, in the reasonable opinion of counsel to such Indemnified Party, either (x) one or more significant defenses are available to the Indemnified Party that are not available to the Indemnifying Party or (y) a conflict or potential conflict exists between the Indemnifying Party, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable; provided, however, that in such circumstances the Indemnifying Party (i) shall not be liable for the fees and expenses of more than one counsel to all Indemnified Parties and (ii) shall reimburse the Indemnified Parties for such reasonable fees and expenses of such counsel incurred in any such Third Party Claim, as such expenses are incurred, provided that the Indemnified Parties agree to repay such amounts if it is ultimately determined that the Indemnifying Party was not obligated to provide indemnification under this Article IX. The Indemnifying Party agrees that it will not, without the prior written consent of the Indemnified Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising or that may arise out of such claim. The rights accorded to an Indemnified Party hereunder shall be in addition to any rights that any Indemnified Party may have at common law, by separate agreement or otherwise; provided, however, that notwithstanding the foregoing or anything to the contrary contained in this Agreement, nothing in this Article IX shall restrict or limit any rights that any Indemnified Party may have to seek equitable relief.

**ARTICLE X**
**MISCELLANEOUS**

Section 10.1 Fees and Expenses.

(a) Each of the Company and the Investor agrees to pay its own expenses incident to the performance of its obligations hereunder, except that the Company shall be solely responsible for (i) all reasonable attorneys fees and expenses incurred by the Investor in connection with the preparation, negotiation, execution and delivery of this Agreement, the Registration Rights Agreement and the Warrant, and review of the Registration Statement, and in connection with any amendments, modifications or waivers of this Agreement, including, without limitation, all reasonable attorneys fees and expenses, (ii) all stamp or other similar taxes and duties, if any, levied in connection with issuance of the Shares pursuant hereto; provided, however, that in each of the above instances the Investor shall provide customary supporting invoices or similar documentation in reasonable detail describing such expenses (however, the Investor shall not be obligated to provide detailed time sheets for legal fees and expenses), and provided further, that the maximum aggregate amount payable by the Company pursuant to clause (i) above shall be $75,000 and the Investor shall bear all fees and expenses in excess of $75,000 in connection with clause (i) above.

(b) If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Registration Rights Agreement or the Warrant, the prevailing party shall be entitled to reasonable fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

Section 10.2 Reporting Entity for the Common Stock. The reporting entity relied upon for the determination of the trading price or trading volume of the Common Stock on any given Trading Day for the purposes of this Agreement shall be Bloomberg, L.P. or any successor thereto. The written mutual consent of the Investor and the Company shall be required to employ any other reporting entity.

Section 10.3 Brokerage. Each of the parties hereto represents that it has had no dealings in connection with this transaction with any finder or broker who will demand payment of any fee or commission from the other party. The Company on the one hand, and the Investor, on the other hand, agree to indemnify the other against and hold the other harmless from any and all liabilities to any Persons claiming brokerage commissions or finder's fees on account of services purported to have been rendered on behalf of the indemnifying party in connection with this Agreement or the transactions contemplated hereby.

Section 10.4 Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery, telegram, or facsimile, addressed as set forth below or to such other address as such party shall have specified most recently by written notice given in accordance herewith, in each case with a copy to the e-mail address set forth beside the facsimile number for the addressee below. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery or delivery by facsimile, with accurate confirmation generated by the transmitting facsimile machine, at the address or number designated below (if delivered on a Trading Day during normal business hours where such notice is to be received), or the first Trading Day following such delivery (if delivered other than on a Trading Day during normal business hours where such notice is to be received) or (b) on the second Trading Day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be:

If to the Company:

Discovery Laboratories, Inc.
2600 Kelley Road, Suite 100
Warrington, Pennsylvania 18976
Facsimile: 215-488-9300
Attention: Deputy General Counsel
Email: mtempleton@DiscoveryLabs.com

with a copy (which shall not constitute notice) to:

Dickstein Shapiro LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
Telephone: (212) 227-6500
Facsimile: (212) 227-6501
E-mail: koteli@dicksteinshapiro.com
Attention: Ira L. Kotel

if to the Investor:

Kingsbridge Capital Limited
Attention: Mr. Tony Gardner-Hillman
P.O. Box 1075
Elizabeth House
9 Castle Street
St. Helier
Jersey
JE42QP
Channel Islands
Telephone: 011-44-1534-636-041
Facsimile: 011-44-1534-636-042
Email: admin@kingsbridgecap.com; and adamgurney@kingsbridgecap.com

with a copy (which shall not constitute notice) to:

Kingsbridge Corporate Services Limited
Kingsbridge House
New Abbey
Kilcullen, County Kildare
Republic of Ireland
Telephone: 011-353-45-481-811
Facsimile: 011-353-45-482-003
Email: adamgurney@kingsbridge.ie; emmagalway@kingsbridge.ie; and pwhelan@kingsbridge.ie

and another copy (which shall not constitute notice) to:
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Facsimile: (212) 806-5400
Attention: Keith M. Andruschak, Esq. - kandruschak@stroock.com

Either party hereto may from time to time change its contact information for notices under this Section by giving at least ten (10) days' prior written notice of such changed contact information to the other party hereto.

Section 10.5 Assignment. Neither this Agreement nor any rights of the Investor or the Company hereunder may be assigned by either party to any other Person.

Section 10.6 Amendment; No Waiver. No party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth in this Agreement, the Warrant and the Registration Rights Agreement. Except as expressly provided in this Agreement, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by both parties hereto. The failure of either party to insist on strict compliance with this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver of any rights provided under this Agreement, nor estop the parties from thereafter demanding full and complete compliance nor prevent the parties from exercising such a right or remedy in the future.

Section 10.7 Entire Agreement. This Agreement, the Registration Rights Agreement and the Warrant set forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written, relating to the subject matter hereof.

Section 10.8 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that, if the severance of such provision materially changes the economic benefits of this Agreement to either party as such benefits are anticipated as of the date hereof, then such party may terminate this Agreement on five (5) Trading Days prior written notice to the other party. In such event, the Registration Rights Agreement will terminate simultaneously with the termination of this Agreement; provided that in the event that this Agreement is terminated by the Company in accordance with this Section 10.8 and the Warrant Shares either have not been registered for resale by the Investor in accordance with the Registration Rights Agreement or are otherwise not freely tradable (if and when issued) in accordance with applicable law, then the Registration Rights Agreement in respect of the registration of the Warrant Shares shall remain in full force and effect.

Section 10.9 Title and Subtitles. The titles and subtitles used in this Agreement are used for the convenience of reference and are not to be considered in construing or interpreting this Agreement.

Section 10.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which may be executed by less than all of the parties and shall be deemed to be an original instrument which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one and the same instrument.

Section 10.11 Choice of Law. This Agreement shall be construed under the laws of the State of New York.

Section 10.12 Specific Enforcement, Consent to Jurisdiction.

(a) The Company and the Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that either party shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by the other party and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which either party may be entitled by law or equity.

(b) Each of the Company and the Investor (i) hereby irrevocably submits to the jurisdiction of the United States District Court and other courts of the United States sitting in the State of New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement and (ii) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Each of the Company and the Investor consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this Section 10.12 shall affect or limit any right to serve process in any other manner permitted by law.

Section 10.13 Survival. The representations and warranties of the Company and the Investor contained in Articles IV and V and the covenants contained in Article V and Article VI shall survive the execution and delivery hereof and the Closing until the termination of this Agreement, and the agreements and covenants set forth in Article VIII and Article IX of this Agreement shall survive the execution and delivery hereof and the Closing hereunder.

Section 10.14 Publicity. Except as otherwise required by applicable law or regulation, or NASDAQ rule or judicial process, prior to the Closing, neither the Company nor the Investor shall issue any press release or otherwise make any public statement or announcement with respect to this Agreement or the transactions contemplated hereby or the existence of this Agreement. In the event the Company is required by law, regulation, NASDAQ rule or judicial process, based upon reasonable advice of the Company's counsel, to issue a press release or otherwise make a public statement or announcement with respect to this Agreement prior to the Closing, the Company shall consult with the Investor on the form and substance of such press release, statement or announcement. Promptly after the Closing, each party may issue a press release or otherwise make a public statement or announcement with respect to this Agreement or the transactions contemplated hereby or the existence of this Agreement; provided that, prior to issuing any such press release, making any such public statement or announcement, the party wishing to make such release, statement or announcement consults and cooperates in good faith with the other party in order to formulate such press release, public statement or announcement in form and substance reasonably acceptable to both parties.

Section 10.15 Further Assurances. From and after the date of this Agreement, upon the request of the Investor or the Company, each of the Company and the Investor shall execute and deliver such instruments, documents and other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

**[Remainder of this page intentionally left blank]**

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

KINGSBRIDGE CAPITAL LIMITED

By: /s/ Tony Gardner-Hillman

Tony Gardner-Hillman
Director

DISCOVERY LABORATORIES, INC..

By: /s/ John G. Cooper

Name: John G. Cooper
Title: Executive Vice President and
Chief Financial Officer

**Exhibit A**

**Form of Registration Rights Agreement**

**Exhibit B**

**Form of Warrant**

**Exhibit C**

**Form of Draw Down Notice**

Kingsbridge Capital Limited
Attention: Mr. Tony Gardner-Hillman
P.O. Box 1075
Elizabeth House
9 Castle Street
St. Helier
Jersey
JE42QP
Channel Islands
Facsimile: 011-44-1534-636-042
Email: admin@kingsbridgecap.com; and adamgurney@kingsbridgecap.com

Kingsbridge Corporate Services Limited
Kingsbridge House
New Abbey
Kilcullen, County Kildare
Republic of Ireland
Facsimile: 011-353-45-482-003
Email: adamgurney@kingsbridge.ie; and pwhelan@kingsbridge.ie

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Facsimile: (212) 806-5400
Attention: Keith M. Andruschak, Esq. - kandruschak@stroock.com

Reference is hereby made to that certain Common Stock Purchase Agreement dated as of May 22, 2008 (the "Agreement") by and between Discovery Laboratories, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), and Kingsbridge Capital Limited, an entity organized and existing under the laws of the British Virgin Islands (the "Investor"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Agreement.

In accordance with and pursuant to Section 3.1 of the Agreement, the Company hereby issues this Draw Down Notice to the Investor pursuant to the terms set forth below.

Draw Down Amount: $_____; and

First Trading Day of Draw Down Pricing Period: _____, 20[_].

Enclosed with this Draw Down Notice is an executed copy of the Officer's Certificate described in Section 3.1 of the Agreement, the base form of which is attached to such Agreement as Exhibit D.

**Exhibit D**

**Officer's Certificate**

I, [NAME OF OFFICER], do hereby certify to Kingsbridge Capital Limited (the "Investor"), with respect to the common stock of Discovery Laboratories, Inc. (the "Company") issuable in connection with the Draw Down Notice, dated _____ (the "Notice") attached hereto and delivered pursuant to Article III of the Common Stock Purchase Agreement, dated May 22, 2008 (the "Agreement"), by and between the Company and the Investor, as follows (capitalized terms used but undefined herein have the meanings given to such terms in the Agreement):

1. I am the duly elected [OFFICER] of the Company.

2. The representations and warranties of the Company set forth in Article IV of the Agreement are true and correct in all material respects as though made on and as of the date hereof (except for such representations and warranties that are made as of a particular date).

3. The Company has performed in all material respects all covenants and agreements to be performed by the Company on or prior to the date hereof related to the Notice and has satisfied each of the conditions to the obligation of the Investor set forth in Article VII of the Agreement.

4. The Shares issuable in respect of the Notice will be delivered without restrictive legend via book entry through the Depositary Trust Company to an account designated by the Investor.

The undersigned has executed this Certificate this _____ day of, 20[_].

Name: _____

Title: _____

**REGISTRATION RIGHTS AGREEMENT**

This REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of May 22nd, 2008, is by and between DISCOVERY LABORATORIES, INC. (the "Company") and KINGSBRIDGE CAPITAL LIMITED (the "Investor").

WHEREAS, the Company and the Investor have entered into that certain Common Stock Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), pursuant to which the Company may issue, from time to time, to the Investor up to $60 million worth of shares of Common Stock as provided for therein;

WHEREAS, pursuant to the terms of, and in partial consideration for the Investor entering into, the Purchase Agreement, the Company has issued to the Investor a warrant, exercisable from time to time, in accordance with its terms, within five (5) years following the six-month anniversary of the date of issuance (the "Warrant") for the purchase of an aggregate of up to 825,000 shares of Common Stock at a price specified in such Warrant;

WHEREAS, pursuant to the terms of, and in partial consideration for, the Investor's agreement to enter into the Purchase Agreement, the Company has agreed to provide the Investor with certain registration rights with respect to the Registrable Securities (as defined in the Purchase Agreement) as set forth herein;

NOW, THEREFORE, in consideration of the premises, the representations, warranties, covenants and agreements contained herein, in the Warrant, and in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties hereto agree as follows (capitalized terms used herein and not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement):

**ARTICLE I**
**REGISTRATION RIGHTS**

Section 1.1 Registration Statement.

(a) Filing of the Registration Statement. Upon the terms and subject to the conditions set forth in this Agreement, the Company shall file with the Commission within ninety (90) calendar days after the Closing Date a registration statement on Form S-3 under the Securities Act or such other form as deemed appropriate by counsel to the Company for the registration for the resale by the Investor of the Registrable Securities (the "Registration Statement"), provided, however, that the Company's obligations in this Article I are subject to any limitations on the Company's ability to register the full complement of such Registrable Securities in accordance with Rule 415 under the Securities Act or other regulatory limitations.

(b) Effectiveness of the Registration Statement. The Company shall use commercially reasonable efforts (i) to have the Registration Statement declared effective by the Commission as soon as reasonably practicable, but in any event no later than one hundred eighty (180) calendar days after the Closing Date and (ii) to ensure that the Registration Statement remains in effect throughout the term of this Agreement as set forth in Section 4.2, subject to the terms and conditions of this Agreement.

(c) Regulatory Disapproval. The contemplated effective date for the Registration Statement as described in Section 1.1(b) shall be extended without default or liquidated damages hereunder or under the Purchase Agreement in the event that the Company's failure to obtain the effectiveness of the Registration Statement on a timely basis results from (i) the failure of the Investor to timely provide the Company with information requested by the Company and necessary to complete the Registration Statement in accordance with the requirements of the Securities Act or (ii) the Commission's disapproval of the structure of the transactions contemplated by the Purchase Agreement, or (iii) events or circumstances that are not in any way attributable to the Company, including but not limited to delays caused by the Commission. In the event of clause (ii) above, the parties agree to cooperate with one another in good faith to arrive at a resolution acceptable to the Commission.

(d) Failure to Maintain Effectiveness of Registration Statement. In the event the Company fails to maintain the effectiveness of the Registration Statement (or the Prospectus) throughout the period set forth in Section 4.2, other than temporary suspensions as set forth in Section 1.1(e), and the Investor holds any Registrable Securities at any time during the period of such ineffectiveness (an "Ineffective Period"), and provided that such failure to maintain effectiveness was within the reasonable control of the Company, the Company shall pay on demand to the Investor in immediately available funds into an account designated by the Investor an amount equal to the product of (i) the total number of Registrable Securities issued to the Investor under the Purchase Agreement (which, for the avoidance of doubt, shall not include any Warrant Shares) and owned by the Investor at any time during such Ineffective Period (and not otherwise sold, hypothecated or transferred) and (ii) the result, if greater than zero, obtained by subtracting the VWAP on the Trading Day immediately following the last day of such Ineffective Period from the VWAP on the Trading Day immediately preceding the day on which any such Ineffective Period began; provided, however, that (A) the foregoing payments shall not apply in respect of Registrable Securities (I) that are otherwise freely tradable by the Investor, including pursuant to Rule 144 under the Securities Act (as such Rule may be amended from time to time, "Rule 144") or (II) if the Company offers to repurchase from the Investor such Registrable Securities for a per share purchase price equal to the VWAP on the Trading Day immediately preceding the day on which any such Ineffective Period began and (B) unless otherwise required by any applicable federal and state securities laws, the Company shall be under no obligation to supplement the Prospectus to reflect the issuance of any Shares pursuant to a Draw Down at any time prior to the day following the Settlement Date with respect to such Shares and that the failure to supplement the Prospectus prior to such time shall not be deemed a failure to maintain the effectiveness of the Registration Statement (or Prospectus) for purposes of this Agreement (including this Section 1.1(d)).

(e) Deferral or Suspension During a Blackout Period. Notwithstanding the provisions of Section 1.1(d), if in the good faith judgment of the Company, following consultation with legal counsel, it would be detrimental to the Company or its stockholders for the Registration Statement to be filed or for resales of Registrable Securities to be made pursuant to the Registration Statement due to (i) the existence of a material development or potential material development involving the Company that the Company would be obligated to disclose or incorporate by reference in the Registration Statement and which the Company has not disclosed, or which disclosure would be premature or otherwise inadvisable at such time or would have a Material Adverse Effect on the Company or its stockholders, or (ii) a filing of a Company-initiated registration of any class of its equity securities would adversely affect or require premature disclosure of such filing (the Company's notice thereof, a "Blackout Notice"), the Company shall have the right to (A) immediately defer such filing for a period of not more than sixty (60) days beyond the date by which such Registration Statement was otherwise required hereunder to be filed or (B) suspend use of such Registration Statement for a period of not more than thirty (30) days (any such deferral or suspension period, a "Blackout Period"). The Investor acknowledges that it would be seriously detrimental to the Company and its stockholders for such Registration Statement to be filed (or remain in effect) during a Blackout Period and therefore essential to defer such filing (or suspend the use thereof) during such Blackout Period and agrees to cease any disposition of the Registrable Securities during such Blackout Period. The Company may not utilize any of its rights under this Section 1.1(e) to defer the filing of a Registration Statement (or suspend its effectiveness) more than six (6) times in any twelve (12) month period. In the event that, within fifteen (15) Trading Days following any Settlement Date, the Company gives a Blackout Notice to the Investor and the VWAP on the Trading Day immediately preceding such Blackout Period ("Old VWAP") is greater than the VWAP on the first Trading Day following such Blackout Period that the Investor may sell its Registrable Securities pursuant to an effective Registration Statement ("New VWAP"), then the Company shall pay to the Investor, by wire transfer of immediately available funds to an account designated by the Investor, the "Blackout Amount." For the purposes of this Agreement, Blackout Amount means a percentage equal to: (1) seventy-five percent (75%) if such Blackout Notice is delivered prior to the fifth (5th) Trading Day following such Settlement Date; (2) fifty percent (50%) if such Blackout Notice is delivered on or after the fifth (5th) Trading Day following such Settlement Date, but prior to the tenth (10th) Trading Day following such Settlement Date; (3) twenty-five percent (25%) if such Blackout Notice is delivered on or after the tenth (10th) Trading Day following such Settlement Date, but prior to the fifteenth (15th) Trading Day following such Settlement Date; and (4) zero percent (0%) thereafter of: the product of (i) the number of Registrable Securities purchased by the Investor pursuant to the most recent Draw Down and actually held by the Investor (and not otherwise sold, hypothecated or transferred) immediately prior to the Blackout Period and (ii) the result, if greater than zero, obtained by subtracting the New VWAP from the Old VWAP; provided, however, that no Blackout Amount shall be payable in respect of Registrable Securities (x) that are otherwise freely tradable by the Investor, including under Rule 144, during the Blackout Period or (y) if the Company offers to repurchase from the Investor such Registrable Securities for a per share purchase price equal to the VWAP on the Trading Day immediately preceding the day on which any such Blackout Period began. For any Blackout Period in respect of which a Blackout Amount becomes due and payable, rather than paying the Blackout Amount, the Company may at is sole discretion, issue to the Investor shares of Common Stock with an aggregate market value determined as of the first Trading Day following such Blackout Period equal to the Blackout Amount ("Blackout Shares").

(f) Liquidated Damages; Sole Remedy. The Company and the Investor hereto acknowledge and agree that the amounts payable under Sections 1.1(d) and 1.1(e) and the Blackout Shares deliverable under Section 1.1(e) above shall constitute liquidated damages and not penalties. The parties further acknowledge that (i) the amount of loss or damages likely to be incurred by the Investor is incapable or is difficult to precisely estimate, (ii) the amounts specified in such subsections bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred in connection with any failure by the Company to obtain or maintain the effectiveness of the Registration Statement, (iii) one of the reasons for the Company and the Investor reaching an agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Company and the Investor are sophisticated business parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length. The Investor agrees that, so long as the Company makes the payments or deliveries provided for in Sections 1.1(d) or 1.1(e), as applicable, the Company's failure to maintain the effectiveness, deferral or suspension of the Registration Statement that triggered such payments or deliveries shall not constitute a material breach or default of any obligation of the Company to the Investor and such payments or deliveries shall constitute the Investor's sole remedies with respect thereto.

(g) Additional Registration Statements. In the event and to the extent that the Registration Statement fails to register a sufficient amount of Common Stock necessary for the Company to issue and sell to the Investor and the Investor to purchase from the Company all of the Registrable Securities to be issued, sold and purchased under the Purchase Agreement and the Warrant, the Company shall, upon a timetable mutually agreeable to both the Company and the Investor, use its commercially reasonable efforts to prepare and file with the Commission an additional registration statement or statements in order to effectuate the purpose of this Agreement, the Purchase Agreement, and the Warrant.

## ARTICLE II
## REGISTRATION PROCEDURES

Section 2.1 Filings; Information. The Company shall effect the registration with respect to the sale of the Registrable Securities by the Investor in accordance with the intended methods of disposition thereof. Without limiting the foregoing, the Company in each such case will do the following as expeditiously as is commercially reasonable, but in no event later than the deadline, if any, prescribed therefor in this Agreement:

(a) Subject to Section 1.1(e), the Company shall (i) prepare and file with the Commission the Registration Statement; (ii) use commercially reasonable efforts to cause such filed Registration Statement to become and to remain effective (pursuant to Rule 415 under the Securities Act or otherwise); (iii) prepare and file with the Commission such amendments and supplements to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the time period prescribed by Section 4.2 and in order to effectuate the purpose of this Agreement, the Purchase Agreement, and the Warrant; and (iv) comply in all material respects with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the Investor set forth in such Registration Statement; provided, however, that the Company shall be under no obligation to supplement the Prospectus to reflect the issuance of any Shares pursuant to a Draw Down at any time prior to the Trading Day following the second Settlement Date with respect to a Draw Down and, provided further, however, that the Investor shall be responsible for the delivery of the Prospectus to the Persons to whom the Investor sells the Shares and the Warrant Shares, and the Investor agrees to dispose of Registrable Securities in compliance with the plan of distribution described in the Registration Statement and otherwise in compliance with applicable federal and state securities laws.

(b) The Company shall deliver to the Investor and its counsel, in accordance with the notice provisions of Section 4.8, such number of copies of the Registration Statement, each amendment and supplement thereto (in each case including all exhibits thereto), the Prospectus (including each preliminary prospectus) and such other documents or information as the Investor or counsel may reasonably request in order to facilitate the disposition of the Registrable Securities, provided, however, that to the extent reasonably practicable, such delivery may be accomplished via electronic means.

(c) After the filing of the Registration Statement, the Company shall promptly notify the Investor of any stop order issued or, to the Knowledge of the Company, threatened by the Commission in connection therewith and take all commercially reasonable actions required to prevent the entry of such stop order or to remove it if entered.

(d) The Company shall use commercially reasonable efforts to (i) register or qualify the Registrable Securities under such other securities or blue sky laws of each jurisdiction in the United States as the Investor may reasonably (in light of its intended plan of distribution) request, and (ii) cause the Registrable Securities to be registered with or approved by such other governmental agencies or authorities in the United States as may be necessary by virtue of the business and operations of the Company and do any and all other customary acts and things that may be reasonably necessary or advisable to enable the Investor to consummate the disposition of the Registrable Securities; provided, however, that the Company will not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2.1(d), subject itself to taxation in any such jurisdiction, consent or subject itself to general service of process in any such jurisdiction, change any existing business practices, benefit plans or outstanding securities or amend or otherwise modify the Charter or Bylaws.

(e) The Company shall make available to the Investor (and will deliver to Investor's counsel), (i) subject to restrictions imposed by the United States federal government or any agency or instrumentality thereof, copies of all public correspondence between the Commission and the Company concerning the Registration Statement and will also make available for inspection by the Investor and any attorney, accountant or other professional retained by the Investor (collectively, the "Inspectors"), (ii) upon reasonable advance notice during normal business hours all financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records") as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers and employees to supply all information reasonably requested by any Inspectors in connection with the Registration Statement; provided, however, that (x) the Company shall not be obligated to disclose any portion of the Records consisting of either (A) material non-public information or (B) confidential information of a third party and (y) any such Inspectors must agree in writing for the benefit of the Company not to use or disclose any such Records except as provided in this Section 2.1(e). Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential shall not be disclosed by the Inspectors unless the disclosure or release of such Records is requested or required pursuant to oral questions, interrogatories, requests for information or documents or a subpoena or other order from a court of competent jurisdiction or other judicial or governmental process; provided, however, that prior to any disclosure or release pursuant to the immediately preceding clause, the Inspectors shall provide the Company with prompt notice of any such request or requirement so that the Company may seek an appropriate protective order or waive such Inspectors' obligation not to disclose such Records; and, provided, further, that if failing the entry of a protective order or the waiver by the Company permitting the disclosure or release of such Records, the Inspectors, upon advice of counsel, are compelled to disclose such Records, the Inspectors may disclose that portion of the Records that counsel has advised the Inspectors that the Inspectors are compelled to disclose; provided, however, that upon any such required disclosure, such Inspector shall use his or her best efforts to obtain reasonable assurances that confidential treatment will be afforded such information. The Investor agrees that information obtained by it solely as a result of such inspections (not including any information obtained from a third party who, insofar as is known to the Investor after reasonable inquiry, is not prohibited from providing such information by a contractual, legal or fiduciary obligation to the Company) shall be deemed confidential and shall not be used for any purposes other than as indicated above or by it as the basis for any market transactions in the securities of the Company or its affiliates unless and until such information is made generally available to the public. The Investor further agrees that it will, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

(f) The Company shall otherwise comply in all material respects with all applicable rules and regulations of the Commission, including, without limitation, compliance with applicable reporting requirements under the Exchange Act.

(g) The Company shall appoint (or shall have appointed) a transfer agent and registrar for all of the Registrable Securities covered by such Registration Statement not later than the effective date of such Registration Statement.

(h) The Investor shall cooperate with the Company, as reasonably requested by the Company, in connection with the preparation and filing of any Registration Statement hereunder. The Company may require the Investor to promptly furnish in writing to the Company such information as may be required in connection with such registration including, without limitation, all such information as may be requested by the Commission, the NASDAQ Stock Market or FINRA or any state securities commission and all such information regarding the Investor, the Registrable Securities held by the Investor and the intended method of disposition of the Registrable Securities. The Investor agrees to provide such information requested in connection with such registration within five (5) business days after receiving such written request and the Company shall not be responsible for any delays in obtaining or maintaining the effectiveness of the Registration Statement caused by the Investor's failure to timely provide such information.

(i) Upon receipt of a Blackout Notice from the Company, the Investor shall immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until (i) the Company advises the Investor that the Blackout Period has terminated and (ii) the Investor receives copies of a supplemented or amended prospectus, if necessary. If so directed by the Company, the Investor will deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession (other than a limited number of file copies) of the prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

Section 2.2 Registration Expenses. Except as set forth in Section 10.1 of the Purchase Agreement, the Company shall pay all registration expenses incurred in connection with the Registration Statement (the "Registration Expenses"), including, without limitation: (a) all registration, filing, securities exchange listing and fees required by the NASDAQ Stock Market, (b) all registration, filing, qualification and other fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities), (c) all of the Company's word processing, duplicating, printing, messenger and delivery expenses, (d) the Company's internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (e) the fees and expenses incurred by the Company in connection with the listing of the Registrable Securities, (f) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses of any special audits or comfort letters or costs associated with the delivery by independent certified public accountants of such special audit(s) or comfort letter(s), (g) the fees and expenses of any special experts retained by the Company in connection with such registration and amendments and supplements to the Registration Statement and Prospectus, and (h) premiums and other costs of the Company for policies of insurance against liabilities of the Company arising out of any public offering of the Registrable Securities being registered, to the extent that the Company, in its discretion, elects to obtain and maintain such insurance. Any fees and disbursements of underwriters, broker-dealers or investment bankers, including without limitation underwriting fees, discounts, transfer taxes or commissions, and any other fees or expenses (including legal fees and expenses) if any, attributable to the sale of Registrable Securities, shall be payable by each holder of Registrable Securities pro rata on the basis of the number of Registrable Securities of each such holder that are included in a registration under this Agreement.

**ARTICLE III**
**INDEMNIFICATION**

Section 3.1 Indemnification. The Company agrees to indemnify and hold harmless the Investor, its partners, affiliates, officers, directors, employees and duly authorized agents, and each Person or entity, if any, who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with the partners, affiliates, officers, directors, employees and duly authorized agents of such controlling Person or entity (collectively, the "Controlling Persons"),(each of the Investor, its partners, affiliates, officers, directors, employees and duly authorized agents, and the Investor's Controlling Persons, an "Investor Indemnified Person"), from and against any loss, claim, damage, liability, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and costs and expenses of investigating and defending any such claim) (collectively, "Damages"), joint or several, and any action or proceeding in respect thereof to which an Indemnified Investor Person may become subject under the Securities Act or otherwise, as incurred, insofar as such Damages (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, or in any preliminary prospectus, final prospectus, summary prospectus, amendment or supplement relating to the Registrable Securities or arises out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein under the circumstances not misleading, and shall reimburse such Investor Indemnified Person for any legal and other expenses reasonably incurred by the Investor, its partners, affiliates, officers, directors, employees and duly authorized agents, or any such Controlling Person, as incurred, in investigating or defending or preparing to defend against any such Damages or actions or proceedings; provided, however, that the Company shall not be liable to the extent that any such Damages arise out of the Investor's (or any other Investor indemnified Person's) (i) failure to send or give a copy of the final prospectus or supplement (as then amended or supplemented) to the persons asserting an untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such person if such statement or omission was corrected in such final prospectus or supplement or (ii) written confirmation of the sale of Registrable Securities purchased in any specific Draw Down prior to the filing of a supplement to the Prospectus to reflect such Draw Down (provided, that the Company is in compliance with its covenants with respect to the filing of such supplement); provided, further, that the Company shall not be liable to the extent that any such Damages arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, or any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor or any other person who participates as an underwriter in the offering or sale of such securities, in either case, specifically stating that it is for use in the preparation thereof. In connection with any Registration Statement with respect to which the Investor is participating, the Investor will indemnify and hold harmless, to the same extent and in the same manner as set forth in the preceding paragraph, the Company, each of its partners, affiliates, officers, directors, employees and duly authorized agents and each of the Company's Controlling Persons (each a "Company Indemnified Person") against any Damages to which any Company Indemnified Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Damages arise out of or are based upon (a) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, or in any preliminary prospectus, final prospectus, summary prospectus, amendment or supplement relating to the Registrable Securities or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein under the circumstances not misleading to the extent that such violation occurs in reliance upon and in conformity with written information furnished to the Company by the Investor or on behalf of the Investor expressly for use in connection with such Registration Statement, or (b) any failure by the Investor to comply with prospectus delivery requirements of the Securities Act, the Exchange Act or any other law or legal requirement applicable to sales under the Registration Statement, or (c) a written confirmation of the sale of Registrable Securities purchased by such Investor in any specific Draw Down prior to the filing of a supplement to the Prospectus to reflect such Draw Down (provided the Company is in compliance with its covenants with respect to the filing of such supplement).

Section 3.2 Conduct of Indemnification Proceedings. All claims for indemnification under Section 3.1 shall be asserted and resolved in accordance with the provisions of Section 9.2 and 9.3 of the Purchase Agreement.

Section 3.3 Additional Indemnification. Indemnification similar to that specified in the preceding paragraphs of this Article III (with appropriate modifications) shall be given by the Company and the Investor with respect to any required registration or other qualification of securities under any federal or state law or regulation of any governmental authority other than the Securities Act. The provisions of this Article III shall be in addition to any other rights to indemnification, contribution or other remedies which an Investor Indemnified Person or a Company Indemnified Person may have pursuant to law, equity, contract or otherwise.

To the extent that any indemnification provided for herein is prohibited or limited by law, the indemnifying party will make the maximum contribution with respect to any amounts for which it would otherwise be liable under this Article III to the fullest extent permitted by law. However, (a) no contribution will be made under circumstances where the maker of such contribution would not have been required to indemnify the indemnified party under the fault standards set forth in this Article III, (b) if the Investor is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act), no Investor Indemnified Person will be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation, and (c) contribution (together with any indemnification obligations under this Agreement) by the Investor will be limited in amount to the proceeds received by the Investor from sales of Registrable Securities.

## ARTICLE IV
## MISCELLANEOUS

Section 4.1 No Outstanding Registration Rights. Except as otherwise disclosed in accordance with the Purchase Agreement or in the Commission Documents, the Company represents and warrants to the Investor that there is not in effect on the date hereof any agreement by the Company pursuant to which any holders of securities of the Company have a right to cause the Company to register or qualify such securities under the Securities Act or any securities or blue sky laws of any jurisdiction.

Section 4.2 Term. The registration rights provided to the holders of Registrable Securities hereunder, and the Company's obligation to keep the Registration Statement effective, shall terminate at the earlier of (a) such time that is one year following the termination of the Purchase Agreement, (b) such time as all Registrable Securities have been issued and have ceased to be Registrable Securities, or (c) upon the consummation of an "Excluded Merger or Sale" as defined in the Warrant or an event described in the last sentence of Section 6(d) or Section 6(e) of the Warrant. Notwithstanding the foregoing, Section 1.1(d), Article III, Section 4.7, Section 4.8, Section 4.9, Section 4.10, Section 4.11 and Section 4.13 shall survive the termination of this Agreement.

Section 4.3 Rule 144. The Company will, at its expense, promptly take such action as holders of Registrable Securities may reasonably request to enable such holders of Registrable Securities to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the Securities Act ("Rule 144"), as such Rule may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission; provided, that such holders of Registrable Securities may not make any such request more than once in any calendar quarter during the term of this Agreement. If at any time the Company is not required to file such reports, it will, at its expense, forthwith upon the written request of any holder of Registrable Securities, make available adequate current public information with respect to the Company within the meaning of Rule 144(c)(2) or such other information as necessary to permit sales pursuant to Rule 144. Upon the request of the Investor, the Company will deliver to the Investor a written statement, signed by the Company's principal financial officer, as to whether it has complied with such requirements.

Section 4.4 Certificate. The Company will, at its expense, forthwith upon the request of any holder of Registrable Securities, deliver to such holder a certificate, signed by the Company's principal financial officer, stating (a) the Company's name, address and telephone number (including area code), (b) the Company's Internal Revenue Service identification number, (c) the Company's Commission file number, (d) the number of shares of each class of capital stock outstanding as shown by the most recent report or statement published by the Company, and (e) whether the Company has filed the reports required to be filed under the Exchange Act for a period of at least ninety (90) days prior to the date of such certificate and in addition has filed the most recent annual report required to be filed thereunder.

Section 4.5 Amendment And Modification. Any provision of this Agreement may be waived, provided that such waiver is set forth in a writing executed by the Company and the holder(s) of the majority of then-outstanding Registrable Securities. The provisions of this Agreement, including the provisions of this sentence, may be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may be given, with the written consent of the Company and the holder(s) of the majority of then-outstanding Registrable Securities. No course of dealing between or among any Person having any interest in this Agreement will be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

Section 4.6 Successors and Assigns; Entire Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Company may assign this Agreement at any time in connection with a sale or acquisition of the Company, whether by merger, consolidation, sale of all or substantially all of the Company's assets, or similar transaction, without the consent of the Investor, provided that the successor or acquiring Person or entity agrees in writing to assume all of the Company's rights and obligations under this Agreement. Investor may assign its rights and obligations under this Agreement only with the prior written consent of the Company, and any purported assignment by the Investor absent the Company's consent shall be null and void. This Agreement, together with the Purchase Agreement and the Warrant sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature among them.

Section 4.7 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that, if the severance of such provision materially changes the economic benefits of this Agreement to either party as such benefits are anticipated as of the date hereof, then such party may terminate this Agreement on five (5) business days prior written notice to the other party. In such event, the Purchase Agreement will terminate simultaneously with the termination of this Agreement.

Section 4.8 Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be given in accordance with Section 10.4 of the Purchase Agreement.

Section 4.9 Governing Law; Dispute Resolution. This Agreement shall be construed under the laws of the State of New York.

Section 4.10 Headings. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement, nor shall they affect their meaning, construction or effect.

Section 4.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute one and the same instrument.

Section 4.12 Further Assurances. Each party shall cooperate and take such action as may be reasonably requested by another party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

Section 4.13 Absence of Presumption. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

KINGSBRIDGE CAPITAL LIMITED

By: /s/ Tony Gardner-Hillman

Tony Gardner-Hillman
Director

Discovery Laboratories, Inc.

By: /s/ John G. Cooper

Name: John G. Cooper,
Title:Executive Vice President and
Chief Financial Officer

# Discovery Labs Secures $60 Million Committed Equity Financing Facility

**Warrington, PA — May 27, 2008 — Discovery Laboratories, Inc. (Nasdaq: DSCO),** has entered into a new Committed Equity Financing Facility (CEFF) with Kingsbridge Capital Limited, a private investment group, in which Kingsbridge has committed to provide up to $60 million of capital over a three-year period through the purchase of newly-issued shares of Discovery Labs' common stock. Under the terms of the agreement, Discovery Labs will determine the exact timing and amount of any CEFF financings, subject to certain conditions. The CEFF allows Discovery Labs to raise capital, at its discretion, to support the Company's business plans.

John G. Cooper, Executive Vice President and Chief Financial Officer of Discovery Labs, commented, "This new CEFF, coupled with our existing cash and our 2006 CEFF, significantly improves the Company's financial flexibility to support the potential commercialization of SURFAXIN® for the prevention of Respiratory Distress Syndrome in premature infants and the development of our respiratory pipeline. Our ability to choose the timing and amount of financings under our CEFF arrangements has the potential to minimize dilution for our shareholders."

Under the terms of the CEFF, Discovery Labs has access to up to $60 million from Kingsbridge in exchange for newly-issued shares of Discovery Labs' common stock. The funds that can be raised under the CEFF will depend on the number of shares actually sold, which may not exceed a total of approximately 19.3 million shares. Discovery Labs may access the capital for up to three years after the Securities and Exchange Commission declares effective a registration statement to be filed by Discovery Labs covering the resale of the shares of common stock issuable in connection with the CEFF.

Discovery Labs may access capital under the CEFF in tranches of up to the lesser of $10 million or 3% of Discovery Labs' market capitalization at the time of the draw down of each tranche, subject to certain conditions. The shares covered by each tranche will be issued and priced over an eight-day period. Kingsbridge will purchase shares of common stock pursuant to the CEFF at discounts ranging from 6% to 12% depending on the volume-weighted average market price of the common stock. The minimum acceptable purchase price for the shares to be issued to Kingsbridge during the eight-day period is determined by the higher of $1.15 or 90% of the volume-weighted average price of Discovery Labs' common stock the day before the commencement of each tranche. Throughout the term of the CEFF, Kingsbridge is restricted from engaging in any short selling of Discovery Labs' common stock.

Discovery Labs is not obligated to use any of the $60 million available under the CEFF. The CEFF does not restrict Discovery Labs' operating activities and does not prohibit Discovery Labs from entering into or completing debt or equity financings, other than those that would involve certain future-priced securities.

In connection with the CEFF, Discovery Labs issued a warrant to Kingsbridge to purchase up to 825,000 shares of common stock at an exercise price of $2.51 per share, which represents a 40% premium over the average of the closing prices of Discovery Labs' common stock during the five trading days preceding the signing of the CEFF. The warrant will be exercisable beginning six months from the date of the agreement and will remain exercisable for five years.

The securities issuable in connection with the CEFF and upon the exercise of the warrant issued to Kingsbridge have not been registered under the Securities Act of 1933 and may not be offered or sold in the United States absent registration under the Securities Act and applicable state securities laws or available exemptions from registration requirements. Discovery Labs has agreed to file a registration statement for the resale of the shares of common stock issuable in connection with the CEFF and the shares of common stock underlying the warrant. This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state.

**About Discovery Labs**

Discovery Laboratories, Inc. is a biotechnology company developing Surfactant Replacement Therapies (SRT) for respiratory diseases. Surfactants are produced naturally in the lungs and are essential for breathing. Discovery Labs' technology produces a peptide-containing synthetic surfactant that is structurally similar to pulmonary surfactant. Discovery Labs believes that, with its proprietary technology, SRT has the potential, for the first time, to advance respiratory medicine and address a variety of respiratory diseases affecting neonatal, pediatric and adult patients.

SURFAXIN®, the Company's lead product from its SRT pipeline, is the subject of an Approvable Letter from the FDA for the prevention of Respiratory Distress Syndrome in premature infants. SURFAXIN is also being developed for other neonatal and pediatric indications. AEROSURF™, Discovery Labs' aerosolized SRT, is being developed to potentially obviate the need for intubation and conventional mechanical ventilation and holds the promise to significantly expand the use of surfactants in respiratory medicine. For more information, please visit our website at www.Discoverylabs.com.

*To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made, including, without limitation, the risks that: Discovery Labs may be unable to timely respond, if at all, to the recent approvable letter for Surfaxin; Discovery Labs may not succeed in the FDA or other regulatory agency review process, including that such regulatory authority may not approve the marketing and sale of Surfaxin or any other drug product that Discovery Labs may develop, or such regulatory agency may further delay and/or limit marketing of Surfaxin or any of Discovery Labs' drug products by indication or impose other label limitations; Discovery Labs may not be able to raise additional capital or enter into additional collaboration agreements (including strategic alliances for development or commercialization of SRT); changes in the national or international political and regulatory environment may make it more difficult for Discovery Labs to gain FDA or other regulatory approval of its products; Discovery Labs may be unable to profitably develop and market its products; Discovery Labs' significant, time-consuming and costly research and development activities, including pre-clinical studies, clinical trials and other efforts to gain regulatory approval for any of its products may not progress or may be subject to potentially significant delays or regulatory holds, or fail; Discovery Labs may be unable to successfully manufacture or provide adequate supplies of drug substances on a timely basis; Discovery Labs may be unable to transfer its manufacturing technology to third-party contract manufacturers or its contract manufacturers or any of its materials suppliers may encounter problems manufacturing drug products or drug substances on a timely basis or manufacture in amounts sufficient to meet demand; Discovery Labs and its collaborators may be unable to develop, manufacture and successfully commercialize products that combine Discovery Labs' drug products with innovative aerosolization technologies; Discovery Labs may be unable to maintain and protect the patents and licenses related to its SRT; other companies may develop competing therapies and/or technologies or health care reform may adversely affect Discovery Labs; and Discovery Labs may become involved in securities, product liability and other litigation. The foregoing risks and others are further described in Discovery Labs filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.*

**Company Contact:**
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