

01-15-2003

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Docket No. IXS1100



To the Honorable Commissioner for Pa

102338306

hed original documents or copy thereof.

1. Name of Conveying party(ies):

IXSYS, INC

Additional name(s) of conveying party(ies)
attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of name
☒ Other ASSET AND LIABILITY TRANSFER
AGREEMENT WITH AMENDMENT

Execution Date: November 12, 1999

2. Name and address of receiving Party(ies)

Name: NOVASITE PHARMACEUTICALS, INC.

Internal Address: _____

Street Address: 11095 Flintkote AvenueCity: San Diego State: CA Zip: 98005

Additional name(s) & address(es) attached?

☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

US/PCT97/22106

B. Patent No.(s)

5,862,514Additional numbers attached? ☐ Yes ☒ No5. Name and address of party to whom correspondence
concerning document should be mailed:Name: Terrance A. Meador, Esq.GRAY CARY WARE & FREIDENRICH LLPStreet Address 4365 Executive Drive, Suite 1100City: San Diego State: CA Zip: 921216. Total number of Applications and patents involved: 1

7. Total fee (37 CFR 3.41)

\$ 80.00☒ : Enclosed☒ : Authorized to charge the recordation fee or
any underpayment to deposit account.8. ☒ Deposit account Number: 50-2558

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy
of the original document.*

TERRANCE A. MEADOR

Name of Person Signing

Registration No. 30,298

Signature

Date

Total number of pages including cover sheet, attachments, and document: 21

Mail documents to be recorded with required cover sheet information to:
COMMISSIONER OF PATENTS AND TRADEMARKS, BOX ASSIGNMENTS
WASHINGTON, D.C. 20231

ASSET AND LIABILITY TRANSFER AGREEMENT

between

NOVASITE PHARMACEUTICALS, INC.

and

IXSYS, INC.

November 12, 1999

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10047121v4

ASSET AND LIABILITY TRANSFER AGREEMENT

THIS ASSET AND LIABILITY TRANSFER AGREEMENT (this "Agreement") is made and entered into as of the 12th day of November, 1999, between NOVASITE PHARMACEUTICALS, INC., a Delaware corporation ("Novasite"), and IXSYS, INC., a Delaware corporation ("Ixsys").

RECITALS:

WHEREAS, subject to the terms and conditions of this Agreement, Ixsys wishes to sell and transfer certain assets and certain liabilities of its research and development business to Novasite.

WHEREAS, subject to the terms and conditions of this Agreement, Novasite desires to purchase such assets in consideration for the assumption of such liabilities, the issuance to Ixsys of certain shares of Subordinated Preferred Stock of Novasite (the "Subordinated Preferred Stock"), all as more fully described below.

WHEREAS, the parties hereto desire to enter into this Agreement for the purpose of setting forth certain representations, warranties and covenants made to each other as an inducement to the execution and delivery of this Agreement and the conditions precedent to the consummation of the asset and liability transfer and the transactions related thereto.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1

PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale. Subject to the terms and conditions and upon satisfaction of the conditions contained in this Agreement (which term shall include all exhibits and schedules attached hereto) and in reliance upon the representations, warranties and covenants contained herein, on the Closing Date (as hereinafter defined), Ixsys shall sell, assign, transfer and deliver to Novasite, and Novasite shall purchase and acquire from Ixsys, all of Ixsys' right, title and interest in, to and under all the franchises, rights, business, properties and other assets, tangible or intangible, real, personal or mixed, listed below in this Section 1.1 (collectively, the "Assets"), used in or accrued or accruing to the business of the contact and/or screening of any subset derived from a Licensed Library (as defined in that certain License Agreement (the "License Agreement") dated of even date herewith between Ixsys and Novasite) with or against any subset derived from either a Licensed Library or a Library (as defined in the License Agreement) as currently conducted at the Ixsys facility located at 3520 Dunhill Street, San Diego, CA 92121 (the "Transferred Business"), free and clear of Liens (as hereinafter defined):

(a) All (i) United States and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisional applications, continuations and continuations-in-part thereof; and similar, corresponding or equivalent rights to any of the foregoing; and (ii) similar, corresponding or equivalent rights to any of the foregoing; in each case necessary for the conduct of the Transferred Business and listed on Schedule 1.1(a) hereto (collectively, the "Intellectual Property");

(b) The goodwill of Ixsys associated with the Transferred Business;

(c) All books, records, files and other data (including without limitation operating manuals) prepared, created or acquired by Ixsys for use solely in the Transferred Business;

(d) All computer hardware, databases and data collections and all rights therein; all computer software including all source code, object code, firmware, development tools, files, records and data, all media on which any of the foregoing is recorded; all Internet addresses, sites and domain names; all similar, corresponding or equivalent rights to any of the foregoing; and documentation related to any of the foregoing; in each case owned and used by Ixsys in the Transferred Business;

(e) All rights, claims and causes of action against any person arising out of the disclosure or use, or threatened disclosure or threatened use, of any proprietary information to the extent relating to any of the Assets or the Transferred Business, including, without limitation, any invention, process, method, formula, design, treatment, discovery or improvement or application thereof, or other "know-how," or similar property, or any compilation of information, list of customers or suppliers, document or record with respect to any of the foregoing or contained therein;

For purposes of this Agreement "Liens" shall mean all title defects, liens, mortgages, pledges, charges, restrictions, claims, security interests, rights to acquire title or an interest or other encumbrances of any nature whatsoever, whether choate or inchoate.

1.2 Assumption of Assumed Liabilities.

(a) of the Closing Date, Novasite shall accept the Assets subject to and shall assume and shall pay, perform and discharge (and shall indemnify Ixsys with respect to) all the obligations and liabilities relating to the Transferred Business or the Assets (the "Assumed Liabilities").

1.3 Consideration. In consideration for the purchase of the Assets, Novasite shall pay to Ixsys the following:

(a) Stock Issuance at Closing. On the Closing Date, Novasite shall issue to Ixsys Four Million Three Hundred Seventy-Four Thousand Nine Hundred (4,374,900) shares of Subordinated Preferred Stock. The price per share of the Subordinated Preferred Stock shall be One dollar (\$1.00). The rights, preferences and privileges of the Subordinated Preferred Stock will be as stated in the Certificate of Incorporation (the "Restated Certificate") in the form attached hereto as Exhibit 1.3(a).

(b) Payment of Sales or Other Taxes. Any tax (other than taxes imposed in respect to the income of Ixsys (including, without limitation, gain, if any, on the sale of Assets)) that may be payable as a result of the execution of this Agreement or the consummation of the purchase and sale contemplated hereby, shall be paid by Ixsys. Ixsys shall timely file all tax returns which may be required in connection with such tax or taxes. Novasite shall fully reimburse Ixsys for the amount of all such tax or taxes within thirty (30) days after the payment thereof by Ixsys.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 General Representations and Warranties. Except as disclosed or excepted in Schedule 2 hereto (the "Disclosure Schedule"), each of Novasite and Ixsys represents and warrants to the other party as of the date hereof as follows:

(a) Organization, Good Standing and Qualification. It 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 carry on its business as now conducted and as proposed to be conducted. It is qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business and properties.

(b) Authorization. All corporate action on its part and on the part of its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, and the performance of all obligations of it hereunder, has been taken or will be taken on or prior to the Closing. This Agreement constitutes the valid and legally binding obligation of it except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) to the extent the indemnification provisions may be limited by applicable federal or state securities laws.

(c) Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state, local or provincial governmental authority on the part of it is required in connection with the consummation of the transactions contemplated by this Agreement.

(d) Compliance with Other Instruments. It is not in violation or default of any provisions of its Certificate of Incorporation, as amended, or Bylaws or of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound or, to its knowledge, of any provision of federal or state statute, rule or regulation applicable to it, which violation or default would be materially adverse to the Transferred Business. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event which results in the

f any material lien, charge or encumbrance upon any assets of it or the suspension, a, impairment, forfeiture or nonrenewal of a material permit, license, authorization or applicable to it or the Transferred Business.

2 Representations and Warranties Regarding the Assets. Except as disclosed or in the Disclosure Schedule, Ixsys represents and warrants to Novasite as of the date follows:

- a) The Assets are owned by Ixsys. No person or entity other than Ixsys has any e or interest in or to the Assets.
- b) Ixsys has, and at the Closing Novasite will receive, good, valid and marketable ll of the Assets, free and clear of any Lien.
- (c) The Assets constitute substantially all of the properties and rights, tangible or le, real or personal, owned by Ixsys or its subsidiaries and required for the continued on of the Transferred Business in the manner in which it is currently operated.
- (d) Ixsys has not received any communications alleging that Ixsys has violated, by ting the Transferred Business, any of the patents, trademarks, service marks, trade names, ghts or trade secrets or other proprietary rights of any other person or entity. To the best s' knowledge, the Transferred Business as conducted or as proposed to be conducted as oed in the Business Plan dated November 8, 1999 does not infringe or conflict with the of others, including rights under patents, trademarks, service marks, trade names, ghts, trade secrets or other proprietary rights. Ixsys has not received any communication y of the Intellectual Property is being infringed or compromised by others.
- (e) There is no action, suit, proceeding or investigation pending or currently ened against Ixsys which questions the validity of this Agreement, or the right of Ixsys to into this Agreement or to consummate the transactions contemplated hereby, or which : result, either individually or in the aggregate, in any material adverse change in the Assets : Transferred Business, nor is Ixsys aware that there is any basis for the foregoing. The oing includes, with respect to the Assets and the Transferred Business only, but otherwise out limitation, actions, suits, proceedings or investigations pending or threatened (or any therefor known to Ixsys) involving the prior employment of any of Ixsys' employees, their n connection with Ixsys' business of any information or techniques allegedly proprietary to of their former employers, or their obligations under any agreements with prior employers. s is not a party or subject to the provisions of any order, writ, injunction, judgment or decree y court or government agency or instrumentality. There is no action, suit, proceeding or stigation by Ixsys currently pending or which Ixsys intends to initiate regarding the Assets or Transferred Business.
- (f) Ixsys has filed all tax income returns and reports with respect to the Assets and Transferred Business as required by applicable law. These returns and reports are true and rect in all material respects. Ixsys has paid all income taxes and other assessments with pect to the Assets and the Transferred Business due prior to the time penalties would accrue

thereon. The provision for income taxes of Ixsys with respect to the Assets and the Transferred Business is adequate for income taxes due or accrued as of the date thereof.

(g) There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Ixsys who would be entitled to any fee or commission from Novasite upon consummation of the transactions contemplated hereby.

(h) To the knowledge of Ixsys, there exist no facts or circumstances that would give rise to a claim by any third party for damages resulting from bodily injury, death or property damage attributable to the manufacture, use or sale by Ixsys of products or services relating to the Transferred Business prior to the Closing Date.

(i) Effective upon the transfer of the Assets hereunder, Ixsys will not own any technology or information necessary for the conduct of the Transferred Business, except for the technology licensed to Novasite under the License Agreement and certain records and data to which Novasite will be provided access in accordance with Article 4 herein.

2.3 Representations and Warranties of Novasite Regarding the Subordinated Preferred Stock. Novasite represents and warrants to Ixsys as of the date hereof as follows:

(a) Subordinated Preferred Stock. The Subordinated Preferred Stock (i) has been duly and validly authorized, and (ii) upon completion of the Closing pursuant to the terms hereof, (A) will be validly issued to Ixsys and fully paid and nonassessable, (B) based in part upon the representations of Ixsys in this Agreement, will have been issued in compliance with all applicable federal and state securities laws, and (C) shall be free of all adverse claims and restrictions on transfer other than restrictions on transfer under this Agreement and under applicable federal and state securities.

(b) Common Stock. The Common Stock of Novasite issuable upon conversion of the Subordinated Preferred Stock purchased under this Agreement (i) has been duly and validly authorized and reserved for issuance, (ii) upon issuance and in accordance with the terms of the Restated Certificate, (A) shall be duly and validly issued, fully paid and nonassessable, (B) based in part upon the representations of Ixsys in this Agreement, will have been issued in compliance with all applicable federal and state securities laws, and (C) shall be free of all adverse claims and restrictions on transfer other than restrictions on transfer under this Agreement and under applicable federal and state securities.

2.4 Representations and Warranties of Ixsys Regarding the Subordinated Preferred Stock. Ixsys acknowledges that Novasite has entered into this Agreement in reliance upon Ixsys' representations and warranties to Novasite, and Ixsys hereby confirms, that:

(a) Purchase Entirely for Own Account. The Subordinated Preferred Stock to be acquired by Ixsys pursuant to Section 1.3 hereof are acquired for investment purposes and for its own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that Ixsys has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, Ixsys further represents that Ixsys does not have any contract, undertaking, agreement or arrangement with any person to sell,

transfer or grant participations to such person or to any third person, with respect to any of the Subordinated Preferred Stock.

(b) Restricted Securities. Ixsys understands that the Subordinated Preferred Stock it is acquiring are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from Novasite in a transaction exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and that such Subordinated Preferred Stock may be resold without registration under the Securities Act only in certain limited circumstances. In this connection Ixsys represents that it is familiar with Rule 144 promulgated under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(c) Legends. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

(i) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to Novasite that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(ii) Any legend required by the laws of the State of California or other jurisdiction.

(d) Accredited Investor. Ixsys represents and warrants to Novasite that it is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

2.5 Representations and Warranties of Novasite. Novasite represents and warrants to Ixsys as of the date hereof that, prior to the date hereof, it has conducted no business activities except those relating to its incorporation, organization and the negotiation and preparation of this Agreement, the Series A Preferred Stock Purchase Agreement dated the same date herewith between Novasite and the investors listed on Schedule A thereto and those documents, instruments and agreements contemplated hereby and thereby.

ARTICLE 3

INDEMNIFICATION

3.1 Indemnification.

(a) Novasite shall indemnify, defend and hold harmless Ixsys from and against any and all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) incurred or suffered by Ixsys to the extent arising from (i) the Assumed Liabilities, or (ii) any breach of any representation, warranty or covenant of Novasite under this Agreement, except to the extent that Ixsys is obligated to indemnify Novasite pursuant to Section 3.1(b) for any such

losses, liabilities, damages and expenses to the extent arising from any breach of any representation, warranty or covenant of Ixsys under this Agreement.

(b) Ixsys shall indemnify, defend and hold harmless Novasite from and against any and all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) incurred or suffered by Novasite to the extent arising from any breach of any representation, warranty or covenant of Ixsys under this Agreement.

3.2 Procedure.

(a) If Novasite or Ixsys (the "Indemnitee") intends to claim indemnification under this Article 3 with respect to any claim, demand, action or other proceeding by any third party, the Indemnitee promptly shall notify the other party (the "Indemnitor") thereof, and the Indemnitor shall have the right to assume the defense thereof with counsel selected by the Indemnitor; provided, however, that the Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if representation of the Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between the Indemnitee and any other party represented by such counsel in such proceedings.

(b) The indemnity obligations under this Article 3 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed. The failure to deliver notice to the Indemnitor within a reasonable time after the commencement of any such action or other proceeding, if prejudicial to its ability to defend such action, shall relieve the Indemnitor of any liability to the Indemnitee under this Article 3, but the omission so to deliver notice to the Indemnitor will not relieve it of any liability that it may have to the Indemnitee otherwise than under this Article 3.

(c) The Indemnitee, its employees and agents, shall reasonably cooperate with the Indemnitor and its legal representatives in the investigation of any claim, demand, action or other proceeding covered by this indemnification.

ARTICLE 4

RECORDS

For a period of two years from the date of this Agreement, Ixsys shall provide Novasite with reasonable access to any books, records, files and other data (including without limitation operating manuals) for Novasite' review and duplication which (a) were prepared, created or acquired by Ixsys, (b) were not transferred to Novasite pursuant to Section 1.1(c) above and (c) are necessary for the conduct of the Transferred Business.

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ARTICLE 5
CONDITIONS PRECEDENT

5.1 Conditions to Each Party's Obligation to Effect the Asset Sale. The respective obligations of each of the parties to effect the Assets sale and the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing, unless otherwise specified, of the following conditions unless waived by each of Novasite and Ixsys or otherwise provided in Section 5.2 below:

(a) Government Approvals. All authorizations, consents, orders or approvals of, or declarations or filings with, any governmental entity deemed necessary or appropriate by Novasite, or Ixsys for the consummation of the transactions contemplated by this Agreement including, but not limited to, the Federal Trade Commission, the Department of Justice, applicable federal or state securities law regulatory bodies, shall have been filed, occurred or been obtained, in each case subject to no term, condition or restriction unacceptable to Novasite or Ixsys. Novasite and Ixsys agree to cooperate with each other to the fullest extent practicable in satisfying all applicable federal and state filing requirements, and in obtaining all applicable federal and state regulatory approvals.

(b) Legal Action. No temporary restraining order, preliminary injunction or permanent injunction or other order preventing the consummation of the asset and liability transfer shall have been issued by any federal or state court and remain in effect, and no litigation seeking the issuance of such an order or injunction, shall be pending which, in the good faith judgment of Ixsys or Novasite, has a reasonable probability of resulting in such order, injunction or damages. In the event any such order or injunction shall have been issued, each party agrees to use its reasonable efforts to have any such injunction lifted.

(c) Statutes. No statute, rule or regulation shall have been enacted by the government of the United States or any state or agency thereof which would make the consummation of the asset and liability transfer illegal.

(d) Third-Party Approvals. Any and all consents or approvals required from third parties relating to contracts, agreements, licenses, leases and other instruments constituting the Assets shall have been obtained.

(e) Related Agreements. Novasite and Ixsys shall have duly executed and delivered the following agreements:

- (i) Transition Services Agreement between Ixsys and Novasite; and
- (ii) Laboratory Use License Agreement between Ixsys and Novasite.
- (iii) License Agreement.

(f) Consulting Agreements. Within thirty (30) days after the Closing, Ixsys and each of the individuals listed in Schedule 5.1(f) shall have duly executed and delivered termination

agreements to any existing consulting agreements between Ixsys and such individuals in such form as reasonably acceptable to the parties thereto. Within thirty (30) days after the Closing, Novasite and each of the individuals listed in Schedule 5.1(f) shall have duly executed and delivered new consulting agreements with Novasite in such form as reasonably acceptable to the parties thereto.

(g) Restated Certificate. The Restated Certificate shall have been duly filed with the Secretary of State of the State of Delaware.

5.2 Further Consents. If, notwithstanding the best efforts of the parties to fully satisfy the conditions precedent set forth in Section 5.1(d) above, (a) the requirement to obtain any consents or approvals described in Section 5.1(d) above which are not obtained as of the Closing Date shall be waived, and (b) the parties shall use their best efforts to obtain all consents and approvals described in Section 5.1(d) above which are not obtained as of the Closing Date as soon as reasonably practicable after the Closing Date.

5.3 Further Assurances. As soon as reasonably practicable after the Closing Date, Ixsys shall duly execute and deliver to Novasite all further documents, instruments and agreements as reasonably requested by Novasite or otherwise required to transfer any of the Assets to Novasite, including without limitation, assignments of the Intellectual Property.

ARTICLE 6

CLOSING

6.1 Closing Date. The Closing under this Agreement (the "Closing") shall be held no later than November 12, 1999, or such later date as the parties shall agree upon. Such date on which the Closing is to be held is herein referred to as the "Closing Date." The Closing shall be held at the offices of Pillsbury Madison & Sutro LLP, at 10:00 A.M. on such date, or at such other time and place as Novasite and Ixsys may agree upon in writing.

6.2 Deliveries at Closing.

(a) Deliveries by Ixsys. At the Closing, Ixsys shall deliver to Novasite:

- (i) all the Assets; and
- (ii) the original of the bill of sale, duly executed by Ixsys, conveying to Novasite the personal property Assets; and
- (iii) such other instruments and documents as may be reasonably requested by Novasite or otherwise required to transfer any of the Assets to Novasite; and
- (iv) such other instruments and documents as may be reasonably requested by Novasite prior to the Closing.

(b) Delivery by Novasite. At the Closing, Novasite shall deliver to Ixsys:

(i) the shares of Subordinated Preferred Stock in accordance with Section 1.3(a) above; and

(ii) such other instruments and documents as may be reasonably requested by Ixsys prior to the Closing.

ARTICLE 7

GENERAL

7.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts between California residents entered into and to be performed entirely within the State of California, without regard to the conflicts of law principles thereof.

7.2 Successors and Assigns. No part of this Agreement or any rights, duties or obligations described herein shall be assigned or delegated without the express written consent of the parties hereto, except that either party may assign its rights, obligations and responsibilities only in connection with the transfer or sale of all or substantially all of its business, or in the event of its merger, consolidation, change in control or similar transaction. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

7.3 Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject hereof and supersedes all prior agreements and understandings, both written and oral.

7.4 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

7.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail or commercial overnight courier (e.g., Federal Express, Network Courier, etc.), return receipt or confirmation of delivery requested, or by facsimile transmission with voice confirmation of receipt, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Novasite:

Novasite Pharmaceuticals, Inc.
3520 Dunhill Street
San Diego, CA 92121
Attention: President

If to Ixsys to:

Ixsys, Inc.
3520 Dunhill Street
San Diego, CA 92121
Attention: President

7.6 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the parties, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

[Rest of page intentionally left blank]

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

NOVASITE PHARMACEUTICALS, INC.

By UD

Title President

IXSYS, INC.

By Lee Dale

Title VP of Business Development

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EXHIBIT 1.3(a)

RESTATED CERTIFICATE

[ATTACHED]

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SCHEDULE 1.1(a)

INTELLECTUAL PROPERTY

Patents and Patent Applications

- "Method and Means for Synthesis-Based Simulation of Chemicals Having Biological Functions," U.S. Patent No. 5,862,514 issued 1/19/99, patent application filed 12/6/96.
- "Method and Means for Synthesis-Based Simulation of Chemicals Having Biological Functions," National II Phase Filing of PCT Application US97/22106, filed 11/25/97. PCT for US 5,862,514/2013-3.

SCHEDULE 2
DISCLOSURE SCHEDULE

Ixsys, Inc.
Asset and Liability Transfer Agreement
Disclosure Schedule

The following are exceptions to the representations and warranties of Ixsys, Inc. set forth in that certain Asset and Liability Transfer Agreement dated as of November 12, 1999 (the "Agreement"), with reference to the subsection designations of the Agreement. The reference to specific subsections is not meant and should not be construed as limiting the noted exceptions to that particular subsection. Any exception noted below is deemed disclosed for purposes of all relevant subsections whether or not cross-referenced.

Section 2.2(c) The Transferred Business will require a license to certain Cre-lox technology owned by Dupont.

Section 2.2(d) The Transferred Business has no trademarks, service marks, trade names or copyrights.

Reference is made to the disclosure under Section 2.2(c).

SCHEDULE 5.1(f)

CONSULTANTS

Ballestreros, Juan
Boger, Ph.D., Dale
Carson, Ted
Freedman, Ph.D., Michael
He, Ph.D., Zheng-Xu
Lapedes, Ph.D., Alan
Rock, Linda
Weinstein, D.Sc., Harel

AMENDMENT NO. 1 TO ASSET AND LIABILITY TRANSFER AGREEMENT

THIS AMENDMENT NO. 1 TO ASSET AND LIABILITY TRANSFER AGREEMENT (this "Amendment"), effective as of 11/99 (the "Effective Date"), is entered into between NOVASITE PHARMACEUTICALS, INC., a Delaware corporation ("Novasite"), having a place of business at 3520 Dunhill Street, San Diego, California 92121, and APPLIED MOLECULAR EVOLUTION, INC., f/k/a Ixsys, Inc., a Delaware corporation ("AME"), having a place of business at 3520 Dunhill Street, San Diego, California 92121.

RECITALS

A. The parties have entered into the Asset and Liability Transfer Agreement effective as of November 12, 1999 (the "Agreement"). All terms used, but not defined, in this Amendment shall have the respective meanings set forth in the Agreement.

B. The parties now desire to amend the Agreement, on the terms and conditions set forth below, to more accurately reflect the original intention and the course of performance between the parties.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the parties hereby amend the Agreement and otherwise agree as follows:

1. AMENDMENT. Schedule 1.1(a) of the Agreement is replaced in its entirety with Schedule 1.1(a) attached hereto.

2. MISCELLANEOUS.

2.1 Continuing Effect. This Amendment shall be effective for all purposes as of the Effective Date. Except as otherwise expressly modified by this Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

2.2 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

2.3 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Amendment effective as of the Effective Date.

APPLIED MOLECULAR EVOLUTION,
INC.

By: 

Name: Lawrence E. Bloch, M.D.

Title: Chief Financial Officer and
Vice President of
Business Development

NOVASITE PHARMACEUTICALS, INC.

By: 

Name: William D. Huse, MD, Ph.D.

Title: Chief Executive Officer and
President

INTELLECTUAL PROPERTY

Patents and Patent Applications

- "Method and Means for Synthesis-Based Simulation of Chemicals Having Biological Functions," U.S. Patent No. 5,862,514 issued 1/19/99, patent application filed 12/6/96.
- "Method and Means for Synthesis-Based Simulation of Chemicals Having Biological Functions," National II Phase Filing of PCT Application US97/22106, filed 11/25/97. PCT for US 5,862,514/2013-3.
- "Method for Identifying Optimal Binding Ligands to a Receptor," Provisional Application No. 60/112,001, filed October 9, 1997 (Docket Ref. No. 2643).
- "Method for Identifying Optimal Binding Ligands to a Receptor," United States Application No. 09/169,048, filed October 8, 1998 (Docket Ref. No. 3280).
- "Method for Identifying Optimal Binding Ligands to a Receptor," International Application Number PCT/US98/21390, filed October 8, 1998 (Docket Ref. No. 3329).
- "Method for Identifying Optimal Binding Ligands to a Receptor," European Patent Office Application No. 98952213.1, filed October 8, 1998 (Docket Ref. No. 4100).
- "Method for Identifying Optimal Binding Ligands to a Receptor," Japanese Patent Office No. 2000-516057, filed October 8, 1998 (Docket Ref. No. 4101).