

SCIO DIAMOND TECHNOLOGY CORP

FORM 8-K (Current report filing)

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): May 4, 2012

SCIO DIAMOND TECHNOLOGY CORPORATION
(Exact Name of Registrant As Specified in Its Charter)

Nevada
(State or Other Jurisdiction of
Incorporation)

000-54529
(Commission File Number)

45-3849662
(I.R.S. Employer Identification No.)

411 University Ridge, Suite D, Greenville, South Carolina 29601
(Address of Principal Executive Offices) (Zip Code)

(864) 751-4880
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(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 (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17CFR 240.14d-2(b))

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.

Item 3.02 Unregistered Sales of Equity Securities.

On May 4, 2012, Scio Diamond Technology Corporation, a Nevada corporation (the “Company”), entered into subscription agreements (the “Subscription Agreements”) with certain accredited investors (the “Investors”) for the purchase and sale of an aggregate of up to 2,750,000 Units (the “Units”), with each Unit consisting of one share of its common stock, par value \$0.001 per share (collectively, the “Shares”), and a Warrant (collectively, the “Warrants”) to purchase one share of its common stock at \$1.60 per share, for an aggregate purchase price of up to \$2,200,000. The purchase price per Unit was \$0.80. Under the Subscription Agreements, the Company is obligated to issue the Units, and the Investors are obligated to fund, in six staged investments (each an “Investment”), totaling an aggregate of \$2,200,000, upon the Company’s achievement of various milestones and other funding conditions, as described in the Agreement. Each Investment is conditioned upon the satisfaction, or the waiver by the respective parties, of various closing conditions, including, among other things, the condition that each Investment close on or before March 31, 2013. The first two Investments were consummated on May 4, 2012, resulting in gross proceeds to the Company of \$550,000 and an issuance of 687,500 Units.

The Company is obligated to provide one of the Investors with information rights, including consultation rights, inspection and access rights, and the right to audited and unaudited financial statements, annual budget and other financial and operational information. In addition, subject to and promptly following the closing of the sixth Investment, the Company is obligated to increase its Board of Directors by one director and the Board shall appoint one designee of such Investor to the Board. The Investor’s ongoing rights to this nomination and its information and related rights are subject to maintenance of certain ownership thresholds.

The Warrants are immediately exercisable and will automatically expire on the third anniversary of the Issue Date, as defined in the Warrant. The number of shares of common stock of the Company for which, and the price per share at which, a Warrant is exercisable are subject to adjustment upon the occurrence of certain events, including, without limitation, a stock dividend, stock split, or a merger of the Company, as provided in the Warrant. The transfer of the Warrant and the Shares issued upon exercise of the Warrant are subject to the transfer restrictions applicable to restricted securities, and the transfer of the Warrants is further subject to a one-year restriction on the transfer of any Warrant.

Proceeds from the sale of the Units are intended to be used for general corporate purposes.

The offering and sale of the Units has been conducted in reliance upon an exemption from registration provided for by Rule 506 of Regulation D and Section 4(2) of the Securities Act of 1933 (the “Act”). No form of general solicitation or general advertising was used by the Company, or any representative of the Company, in connection with the offer or sale of the Units. No placement agent or finder was involved in the offering or sale of the Units or received any fee in connection therewith. Each of the Investors was an accredited investor. The Units, consisting of the Shares and the Warrants, have not been and will not be registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirement. The Warrants and the Shares are restricted securities, have been appropriately legended as such, and cannot be transferred unless they have been registered, or there is an exemption from registration, under applicable federal and state securities laws.

The foregoing summary description of the Warrants is qualified in its entirety by reference to the full text of the form of Warrant, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit
10.1

Form of Warrant by and between the Company and the Investors

SIGNATURES

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

**SCIO DIAMOND TECHNOLOGY
CORPORATION**

Dated: May 10,
2012

By: /s/ Charles G. Nichols
Name: Charles G. Nichols
Title: Chief Financial Officer

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT: SC CODE ANN. §15-48-10 ET SEQ . AND THE FEDERAL ARBITRATION ACT: 9 U.S.C. 1 ET SEQ .

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR THE COMPANY, UPON ITS REQUEST, RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THIS INSTRUMENT ACCEPTABLE TO THE COMPANY STATING THAT SUCH SALE, TRANSFER OR OTHER DISPOSITION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT AND APPLICABLE STATE LAWS. THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A UNIT SUBSCRIPTION AGREEMENT BY AND AMONG THE ISSUER OF THESE SECURITIES AND THE INVESTORS REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SUCH AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SUCH AGREEMENT WILL BE VOID.

**WARRANT
to purchase**

[]¹

Shares of Common Stock of

Scio Diamond Technology Corporation

Issue Date: []²

1. Definitions. Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

“AAA ” has the meaning set forth in Section 15.

“*Arbitration Rules* ” has the meaning set forth in Section 15.

“*Board of Directors* ” means the board of directors of the Company, including any duly authorized committee thereof.

“*Business Combination* ” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company’s stockholders.

¹ The Company will fill in this number, which will be equal to the number of Units purchased (i.e., 1 share of Common Stock will be subject to the Warrant, for each share of Common Stock purchased).

² The Company will insert the Issue Date into the Warrant. The Issue Date will be the applicable Closing Date.

“ *business day* ” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

“ *Charter* ” means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

“ *Common Stock* ” means the common stock of the Company.

“ *Company* ” means Scio Diamond Technology Corporation, a Nevada corporation.

“ *Dispute* ” has the meaning set forth in Section 15.

“ *Dispute Notice* ” has the meaning set forth in Section 15.

“ *Exchange Act* ” means the Securities Exchange Act of 1934, or any successor statute, and the rules and regulations promulgated thereunder.

“ *Exercise Price* ” means \$1.60.

“ *Expiration Time* ” has the meaning set forth in Section 3.

“ *Issue Date* ” means _____, 2011. ³

“ *Party* ” has the meaning set forth in Section 15.

“ *Parties* ” has the meaning set forth in Section 15.

“ *Person* ” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“ *Regulatory Approvals* ” with respect to the Warrantholder, means, to the extent applicable and required to permit the Warrantholder to exercise this Warrant for shares of Common Stock and to own such Common Stock without the Warrantholder being in violation of applicable law, rule or regulation, the receipt of any necessary approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations thereunder, the Securities Act, and applicable state securities laws.

“ *SEC* ” means the U.S. Securities and Exchange Commission.

“ *Securities Act* ” means the Securities Act of 1933, or any successor statute, and the rules and regulations promulgated thereunder.

“ *Shares* ” has the meaning set forth in Section 2.

³ The Company will insert the Issue Date into the Warrant. The Issue Date will be the date of the applicable Closing Date.

“ *Unit Subscription Agreement* ” means the Unit Subscription Agreement by and among the Company and the original Holder of this Warrant, a copy of which is on file with the Company.

“ *Warrantholder* ” has the meaning set forth in Section 2.

“ *Warrant* ” means this Warrant.

2. Number of Shares; Exercise Price . This certifies that, for value received, the undersigned warrant holder whose name appears on the signature page hereto or its permitted assigns (the “ *Warrantholder* ”) is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the Company, in whole or in part, after the receipt of all applicable Regulatory Approvals, if any, up to an aggregate number of _____⁴ fully paid and nonassessable shares of Common Stock, at a purchase price per share of Common Stock equal to the Exercise Price. The number of shares of Common Stock (the “ *Shares* ”) and the Exercise Price are subject to adjustment as provided herein, and all references to “Common Stock,” “Shares” and “Exercise Price” herein shall be deemed to include any such adjustment or series of adjustments.

3. Exercise of Warrant; Term . Subject to the restrictions on exercise contained in this Warrant, to the extent permitted by applicable laws and regulations, the right to purchase the Shares represented by this Warrant is exercisable, in whole or in part by the Warrantholder, at any time or from time to time after the execution and delivery of this Warrant by the Company on the date hereof, but in no event later than 5:00 p.m., New York City time on the third anniversary of the Issue Date (the “ *Expiration Time* ”), by (A) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the principal executive office of the Company (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and (B) payment of the Exercise Price for the Shares thereby purchased by tendering in cash, by certified or cashier’s check payable to the order of the Company, or by wire transfer of immediately available funds to an account designated by the Company.

If the Warrantholder does not exercise this Warrant in its entirety, the Warrantholder will be entitled to receive from the Company within a reasonable time a new warrant in substantially identical form for the purchase of that number of Shares equal to the difference between the number of Shares subject to this Warrant and the number of Shares as to which this Warrant is so exercised. Notwithstanding anything in this Warrant to the contrary, the Warrantholder hereby acknowledges and agrees that its exercise of this Warrant for Shares is subject to the conditions that (x) the Warrantholder will have first received any applicable Regulatory Approvals and (y) the exercise is subject to a valid exemption from registration under federal and applicable state securities laws.

4. Issuance of Shares; Authorization; Listing . Certificates for Shares issued upon exercise of this Warrant will be issued in such name or names as the Warrantholder may designate, subject to transfer restrictions contemplated by Section 3 of the Unit Subscription Agreement, and will be delivered to such named Person or Persons within a reasonable time after the rights represented by this Warrant shall have been so exercised. The Company hereby represents and warrants that any Shares issued upon the exercise of this Warrant in accordance with the provisions of Section 3 hereof will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by the Warrantholder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Shares so issued will be deemed to have been issued to the Warrantholder as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date. The Company will at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of providing for the exercise of this Warrant, the aggregate number of shares of Common Stock then issuable upon exercise of this Warrant at any time. If the Common Stock is listed on a national securities exchange at the time of exercise of this Warrant, then the Company will use good faith efforts to cause the Shares issuable upon exercise of this Warrant to be listed on such national securities exchange.

⁴ The Company will fill in this number, which will be equal to the number of Units purchased (i.e., 1 share of Common Stock will be subject to the Warrant, for each share of Common Stock purchased).

5. Legends. The Warrantholder agrees to the imprinting of a legend on the Shares issued upon the exercise of this Warrant pursuant to this Agreement in substantially the following form:

THE ISSUANCE OF THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR APPLICABLE STATE LAWS, AND THESE SHARES OF COMMON STOCK MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, OFFERED, PLEDGED OR OTHERWISE DISTRIBUTED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND/OR SUCH LAWS COVERING THIS CERTIFICATE OR THE COMPANY, UPON ITS REQUEST, RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THIS CERTIFICATE ACCEPTABLE TO THE COMPANY STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT, OFFER, PLEDGE OR OTHER DISTRIBUTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT AND APPLICABLE STATE LAWS.

Certificates evidencing the Shares issued upon the exercise of this Warrant may be issued without such a legend if the Company determines that such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) and applicable state laws.

6. Fractional Shares or Scrip. The Company may issue fractional Shares or scrip representing fractional Shares upon any exercise of this Warrant.

7. No Rights as Stockholders; Transfer Books. This Warrant does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the date of exercise hereof.

8. Charges, Taxes and Expenses. Issuance of certificates for Shares to the Warrantholder upon the exercise of this Warrant shall be made without charge to the Warrantholder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificates.

9. Transfer/Assignment.

(A) Subject to compliance with clause (B) of this Section 9, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 3. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 9 shall be paid by the Company.

(B) *The transfer of the Warrant and the Shares issued upon exercise of the Warrant are subject to the restrictions contemplated by Section 3 of the Unit Subscription Agreement, which include a one-year restriction on the transfer of any Warrant (except in the event of the death of the Holder).* If and for so long as required by the Unit Subscription Agreement, this Warrant shall contain legends as contemplated by Section 3 of the Unit Subscription Agreement.

(C) Until any transfer of this Warrant is made in the warrant registry, the Company may treat the Warrantholder as the absolute owner hereof for all purposes; *provided, however*, that if and when this Warrant is properly assigned in blank, the Company may (but shall not be obligated to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary.

10. Exchange and Registry of Warrant. This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Shares. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

11. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of a bond, indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Shares as provided for in such lost, stolen, destroyed or mutilated Warrant.

12. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

13. Adjustments and Other Rights. The Exercise Price and the number of Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as follows; *provided*, that if more than one subsection of this Section 13 is applicable to a single event, the subsection shall be applied that produces the largest adjustment and no single event shall cause an adjustment under more than one subsection of this Section 13 so as to result in duplication:

(A) Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare and pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (ii) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, the number of Shares issuable upon exercise of this Warrant at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the Warrantholder after such date shall be entitled to purchase the number of shares of Common Stock which such holder would have owned or been entitled to receive in respect of the shares of Common Stock subject to this Warrant after such date had this Warrant been exercised immediately prior to such date. In such event, the Exercise Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted to the number obtained by dividing (x) the product of (1) the number of Shares issuable upon the exercise of this Warrant before such adjustment and (2) the Exercise Price in effect immediately prior to the record or effective date, as the case may be, for the dividend, distribution, subdivision, combination or reclassification giving rise to this adjustment, by (y) the new number of Shares issuable upon exercise of the Warrant determined pursuant to the immediately preceding sentence.

(B) Business Combinations. In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock referred to in Section 13(A)), the Warrantholder's right to receive Shares upon exercise of this Warrant shall be converted into the right to exercise this Warrant to acquire the number of shares of stock or other securities or property (including cash) which the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of this Warrant immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the Warrantholder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to the Warrantholder's right to exercise this Warrant in exchange for any shares of stock or other securities or property pursuant to this paragraph. Unless otherwise determined by the Board of Directors in connection with a Business Combination, in determining the kind and amount of stock, securities or the property receivable upon exercise of this Warrant following the consummation of such Business Combination, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the consideration that the Warrantholder shall be entitled to receive upon exercise shall be deemed to be the types and amounts of consideration received by the majority of all holders of the shares of common stock that affirmatively make an election (or of all such holders if none make an election).

(C) Rounding of Calculations; Minimum Adjustments. All calculations under this Section 13 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Section 13 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of Shares into which this Warrant is exercisable shall be made if the amount of such adjustment would be less than \$0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or 1/10th of a share of Common Stock, or more.

(D) Timing of Issuance of Additional Common Stock Upon Certain Adjustments. In any case in which the provisions of this Section 13 shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (i) issuing to the Warrantholder of this Warrant exercised after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such exercise by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount of cash in lieu of a fractional share of Common Stock; *provided, however*, that the Company upon request shall deliver to such Warrantholder a due bill or other appropriate instrument evidencing such Warrantholder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(E) Other Events. The Exercise Price or the number of Shares into which this Warrant is exercisable shall not be adjusted solely as a result of a change in the par value of the Common Stock or a change in the jurisdiction of incorporation of the Company.

(F) Statement Regarding Adjustments . Whenever the Exercise Price or the number of Shares into which this Warrant is exercisable shall be adjusted as provided in Section 13, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Shares into which this Warrant shall be exercisable after such adjustment.

(G) Notice of Adjustment Event . In the event that the Company shall propose to take any action of the type described in this Section 13 (but only if the action of the type described in this Section 13 would result in an adjustment in the Exercise Price or the number of Shares into which this Warrant is exercisable or a change in the type of securities or property to be delivered upon exercise of this Warrant), the Company shall give notice to the Warrantholder, in the manner set forth in Section 13(F), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of this Warrant. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(H) Adjustment Rules . Any adjustments pursuant to this Section 13 shall be made successively whenever an event referred to herein shall occur. If an adjustment in Exercise Price made hereunder would reduce the Exercise Price to an amount below par value of the Common Stock, then such adjustment in Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Stock.

14. Governing Law . **This Warrant and all rights, obligations and liabilities hereunder shall be governed by and construed under the laws of the State of South Carolina without giving effect to conflicts of laws principles.**

15. Dispute Resolution .

(A) General . Any claim of, or dispute or controversy involving, the Company or the Warrantholder (each a “ *Party* ” and, collectively the “ *Parties* ”) arising out of, connected with, or relating to this Warrant, the subject matter of this Warrant, its formation or execution, or any right or obligation created by this Warrant, irrespective of the legal theory or claims underlying such claim, dispute, or controversy (including tort or statutory claims) (“ *Dispute* ”), shall be resolved in accordance with this Section 15.

(B) Dispute Notice . The Party asserting the Dispute will give prompt notice to the other Party describing the Dispute in reasonable detail (“ *Dispute Notice* ”).

(C) Informal Proceedings . Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally. Towards that end, promptly after receipt of the Dispute Notice, the Parties, personally or through party representatives, will negotiate in good faith to resolve the Dispute. The specific format for the discussions shall be left to the discretion of the designated representatives.

(D) Formal Proceedings . Formal proceedings for the resolution of a dispute pursuant to this Section 15 may not be commenced until the earlier of:

(i) the Parties or designated Party representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or

(ii) 30 business days from the date of the Dispute Notice. (This period shall be deemed to run notwithstanding any claim that the process described in this Section was not followed or completed).

(E) **Mandatory Arbitration**.

(i) Upon demand of any Party (whether made before or after institution of any judicial proceeding), any dispute shall be referred to arbitration, and the final decision rendered shall be binding upon the Parties to this Agreement. Disputes include, without limitation, tort claims, counterclaims, securities law claims, contract claims, disputes as to whether a matter is subject to binding arbitration, claims brought as class actions, or claims arising out of or connected with the transaction reflected by any Warrant.

(ii) To the extent not specified or modified hereafter, arbitration shall be conducted under and governed by the Commercial Arbitration Rules (the “ *Arbitration Rules* ”) promulgated by the American Arbitration Association (“ AAA ”), the Securities Arbitration Supplementary Procedures promulgated by the AAA, and Chapter 48 of Title 15 of the Code of Laws of South Carolina, as amended (the South Carolina Uniform Arbitration Act). All arbitration hearings shall be conducted in Greenville County, South Carolina. The Expedited Procedures set forth in the Arbitration Rules shall be applicable to claims of less than \$100,000. All applicable statutes of limitation shall apply to a dispute. A judgment upon the award may be entered in any court having jurisdiction over the Party.

(iii) Where the claim amounts to or exceeds \$100,000, the arbitration shall be conducted before three arbitrators, who shall be licensed attorneys in the State of South Carolina. All plaintiffs/claimants in the action shall be permitted the selection of one arbitrator and all defendants/respondents shall be permitted the selection of the second arbitrator. (For purposes of selection of the arbitrators, third-party, counter, or cross claimants shall not be recognized). The two selected arbitrators shall then select the third arbitrator.

(iv) Where the claim is less than \$100,000, the arbitration shall be conducted before a single arbitrator, who shall be a licensed attorney in the State of South Carolina. This arbitrator shall be selected by mutual agreement of the Parties.

(F) **Litigation**. In the event that the provisions hereof requiring binding arbitration shall for any reason be deemed unenforceable (or if no Party demands that a Dispute be submitted to binding arbitration), the Parties agree as follows:

(i) **Consent to Jurisdiction**. Each Party consents to the jurisdiction of the State Courts of Greenville County, South Carolina, or the Federal Courts of South Carolina located in Greenville County. Each Party expressly and irrevocably consents to the jurisdiction of the aforesaid courts and waives any defenses of lack of personal jurisdiction, improper venue, or forum non conveniens.

(ii) **Exclusive Selection of Forum**. The parties agree that any disputes between them (in contract, tort, statute, or any other legal theory including claims of fraud, suppression, misrepresentation, and fraud in the inducement) or any disputes arising under this Agreement shall be *exclusively* resolved in the State Courts of Greenville County, South Carolina, or the Federal Courts of South Carolina located in Greenville County.

(iii) **Waiver of Right to Jury Trial**. Each Party waives their respective right to a trial by jury with respect to any Dispute. Each Party acknowledges and understands that this waiver is a material inducement to enter into a business relationship, that each has relied on this waiver in entering into this Warrant, and that each will continue to rely on the waiver in their related future dealings. Each Party represents and warrants that each has had the opportunity of reviewing this jury waiver with legal counsel, and that each knowingly and voluntarily waives its jury trial rights.

(G) Expiration. The foregoing obligations, contained in this Section 15, shall indefinitely survive the expiration or earlier termination of this Warrant.

16. Binding Effect. This Warrant shall be binding upon any successors or assigns of the Company and the successors and permitted assigns of the Warrantholder.

17. Amendments. This Warrant may be amended and the observance of any term of this Warrant may be waived only with the written consent of the Company and the Warrantholder.

18. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Company:

Scio Diamond Technology Corporation
411 University Ridge Suite D
Greenville, SC 29601
(Address of principal executive offices)

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

Nelson Mullins Riley & Scarborough, LLP
104 South Main Street, Suite 900
Greenville, South Carolina 29601
Attention: John M. Jennings, Esq.

If to the Warrantholder:

To the address or email address set forth in the Warrantholder's Unit Subscription Agreement or to such other address as shall be designated in a written notice to the Company.

19. Acceptance. Receipt of this Warrant by the Warrantholder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

20. Entire Agreement. This Warrant and the forms attached hereto and the Unit Subscription Agreement and the forms attached thereto contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto. This Warrant may be executed and delivered in one or more counterparts (including by means of telecopied, facsimile or emailed signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

[Form of Notice of Exercise]

Date: _____

TO: Scio Diamond Technology Corporation

RE: Election to Purchase Common Stock

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to subscribe for and purchase the number of shares of the Common Stock set forth below covered by such Warrant. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such shares of Common Stock in the manner set forth below. A new warrant evidencing the remaining shares of Common Stock covered by such Warrant, but not yet subscribed for and purchased, if any, should be issued in the name set forth below.

Number of Shares of Common Stock _____

Aggregate Exercise Price: _____

Holder: _____

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: _____

COMPANY: SCIO DIAMOND TECHNOLOGY CORPORATION

By: _____
Name: _____
Title: _____

**AGREED AND ACKNOWLEDGED BY
WARRANTHOLDER:**

By: _____
Name: _____
Title: _____

[Signature Page to Warrant]

