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# Cytori Therapeutics, Inc. and Subsidiaries

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## Quarterly Report

*For the three and six months ended June 30, 2013*

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended June 30, 2013

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-34375

**CYTORI THERAPEUTICS, INC.**

(Exact name of Registrant as Specified in Its Charter)

**DELAWARE**

(State or other jurisdiction of incorporation or organization)

**33-0827593**

(I.R.S. Employer Identification No.)

**3020 CALLAN ROAD, SAN DIEGO, CALIFORNIA**

(Address of principal executive offices)

**92121**

(Zip Code)

Registrant's telephone number, including area code: **(858) 458-0900**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one).

Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

As of July 31, 2013, there were 67,235,591 shares of the registrant's common stock outstanding.

# CYTORI THERAPEUTICS, INC.

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**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**CYTORI THERAPEUTICS, INC.**  
**CONSOLIDATED CONDENSED BALANCE SHEETS**  
**(UNAUDITED)**

	<u>As of June 30, 2013</u>	<u>As of December 31, 2012</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 13,621,000	\$ 25,717,000
Accounts receivable, net of reserves of \$485,000 and of \$278,000 in 2013 and 2012, respectively	2,897,000	3,926,000
Inventories, net	4,012,000	3,175,000
Other current assets	1,189,000	1,161,000
	<u>21,719,000</u>	<u>33,979,000</u>
Property and equipment, net of accumulated depreciation of \$8,604,000 and of \$8,609,000 in 2013 and 2012, respectively	2,043,000	2,174,000
Restricted cash and cash equivalents	350,000	350,000
Investment in joint venture	—	85,000
Other assets	2,448,000	2,740,000
Intangibles, net	9,282,000	—
Goodwill	3,922,000	3,922,000
	<u>39,764,000</u>	<u>43,250,000</u>
<b>Total assets</b>	<b>\$ 39,764,000</b>	<b>\$ 43,250,000</b>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 6,252,000	\$ 7,411,000
Current portion of long-term obligations, net of discount	21,000	9,784,000
Termination fee obligation	800,000	—
Current portion of Joint Venture purchase obligation	769,000	—
Warrant liability	—	418,000
	<u>7,842,000</u>	<u>17,613,000</u>
<b>Total current liabilities</b>	<b>7,842,000</b>	<b>17,613,000</b>
Deferred revenues, related party	—	638,000
Deferred revenues	235,000	2,635,000
Option liability	—	2,250,000
Long-term deferred rent and other	784,000	756,000
Joint Venture purchase obligation, less current portion	3,921,000	—
Long-term obligations, net of discount, less current portion	25,719,000	12,903,000
	<u>38,501,000</u>	<u>36,795,000</u>
<b>Total liabilities</b>	<b>38,501,000</b>	<b>36,795,000</b>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 5,000,000 shares authorized; -0- shares issued and outstanding in 2013 and 2012	—	—
Common stock, \$0.001 par value; 95,000,000 shares authorized; 67,235,591 and 65,914,050 shares issued and outstanding in 2013 and 2012, respectively	67,000	66,000
Additional paid-in capital	286,835,000	281,117,000
Accumulated other comprehensive loss	(34,000)	—
Accumulated deficit	(285,605,000)	(274,728,000)
	<u>1,263,000</u>	<u>6,455,000</u>
<b>Total stockholders' equity</b>	<b>1,263,000</b>	<b>6,455,000</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 39,764,000</b>	<b>\$ 43,250,000</b>

SEE NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

**CYTORI THERAPEUTICS, INC.**  
**CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
**(UNAUDITED)**

	<b>For the Three Months</b>		<b>For the Six Months</b>	
	<b>Ended June 30,</b>		<b>Ended June 30,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Product revenues	\$ 1,408,000	\$ 1,947,000	\$ 2,800,000	\$ 3,427,000
Cost of product revenues	608,000	1,032,000	1,365,000	1,885,000
Gross profit	800,000	915,000	1,435,000	1,542,000
Development revenues:				
Development, related party	—	2,413,000	638,000	2,413,000
Development revenue	—	—	1,179,000	—
Government contracts and other	859,000	16,000	1,408,000	19,000
	859,000	2,429,000	3,225,000	2,432,000
Operating expenses:				
Research and development	4,150,000	3,224,000	7,869,000	6,060,000
Sales and marketing	2,410,000	2,581,000	4,667,000	4,956,000
General and administrative	4,046,000	3,788,000	7,892,000	7,712,000
Change in fair value of warrant liability	(84,000)	251,000	(418,000)	381,000
Change in fair value of option liability	(2,500,000)	460,000	(2,250,000)	190,000
Total operating expenses	8,022,000	10,304,000	17,760,000	19,299,000
Operating loss	(6,363,000)	(6,960,000)	(13,100,000)	(15,325,000)
Other income (expense):				
Loss on asset disposal	(257,000)	—	(257,000)	—
Loss on debt extinguishment	(708,000)	—	(708,000)	—
Interest income	1,000	1,000	1,000	2,000
Interest expense	(652,000)	(860,000)	(1,361,000)	(1,726,000)
Other income (expense), net	(124,000)	(27,000)	(296,000)	(73,000)
Gain on previously held equity interest in Joint Venture	4,892,000	—	4,892,000	—
Equity loss from investment in joint venture	—	(37,000)	(48,000)	(86,000)
Total other income (expense)	3,152,000	(923,000)	2,223,000	(1,883,000)
Net loss	\$ (3,211,000)	\$ (7,883,000)	\$ (10,877,000)	\$ (17,208,000)
Other comprehensive income (loss) – foreign currency translation adjustments	76,000	—	(34,000)	—
Net comprehensive loss	\$ (3,135,000)	\$ (7,883,000)	\$ (10,911,000)	\$ (17,208,000)
Basic and diluted net loss per common share	\$ (0.05)	\$ (0.13)	\$ (0.16)	\$ (0.30)
Basic and diluted weighted average common shares	67,200,588	58,676,092	67,096,348	58,080,541

SEE NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

**CYTORI THERAPEUTICS, INC.**  
**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**

	<b>For the Six Months Ended June 30,</b>	
	<b>2013</b>	<b>2012</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (10,877,000)	\$ (17,208,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	660,000	453,000
Amortization of deferred financing costs and debt discount	330,000	470,000
Joint Venture acquisition obligation accretion	51,000	—
Provision for doubtful accounts	188,000	19,000
Change in fair value of warrants	(418,000)	381,000
Change in fair value of option liabilities	(2,250,000)	190,000
Share-based compensation expense	1,838,000	1,977,000
Equity loss from investment in joint venture	48,000	86,000
Loss on asset disposal	257,000	—
Gain on previously held equity interest in Joint Venture	(4,892,000)	—
Loss on debt extinguishment	708,000	—
Increases (decreases) in cash caused by changes in operating assets and liabilities:		
Accounts receivable	862,000	258,000
Inventories	(816,000)	210,000
Other current assets	(27,000)	(278,000)
Other assets	(587,000)	17,000
Accounts payable and accrued expenses	(279,000)	(268,000)
Deferred revenues, related party	(638,000)	(2,413,000)
Deferred revenues	(1,200,000)	52,000
Long-term deferred rent	28,000	96,000
Net cash used in operating activities	<u>(17,014,000)</u>	<u>(15,958,000)</u>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(432,000)	(886,000)
License agreement termination fee	(400,000)	—
Cash acquired in purchase of Joint Venture	5,000	—
Net cash used in investing activities	<u>(827,000)</u>	<u>(886,000)</u>
<b>Cash flows from financing activities:</b>		
Principal payments on long-term obligations	(22,292,000)	(140,000)
Proceeds from long-term obligations	27,000,000	—
Debt issuance costs and loan fees	(1,744,000)	—
Payments toward purchase of Joint Venture	(70,000)	—
Proceeds from exercise of employee stock options and warrants and stock purchase plan	115,000	951,000
Proceeds from sale of common stock	3,001,000	4,946,000
Costs from sale of common stock	(184,000)	(64,000)
Net cash provided by financing activities	<u>5,826,000</u>	<u>5,693,000</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(81,000)</u>	<u>—</u>
Net decrease in cash and cash equivalents	(12,096,000)	(11,151,000)
Cash and cash equivalents at beginning of period	<u>25,717,000</u>	<u>36,922,000</u>
Cash and cash equivalents at end of period	<u>\$ 13,621,000</u>	<u>\$ 25,771,000</u>
<b>Supplemental disclosure of cash flows information:</b>		
Cash paid during period for:		
Interest	\$ 1,151,000	\$ 1,257,000
<b>Supplemental schedule of non-cash investing and financing activities:</b>		
Fair value of warrants allocated to additional paid-in capital	949,000	—
Fair value of intangible assets acquired	9,394,000	—
Fair value of tangible assets acquired	260,000	—
Joint Venture purchase obligation	4,709,000	—
Fair value of previously held equity interest at acquisition date	4,929,000	—

SEE NOTES TO UNAUDITED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

**CYTORI THERAPEUTICS, INC.**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**  
**June 30, 2013**  
**(UNAUDITED)**

**1. Basis of Presentation**

Our accompanying unaudited consolidated condensed financial statements as of June 30, 2013 and for the three and six months ended June 30, 2013 and 2012 have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for annual financial statements. Our consolidated condensed balance sheet at June 30, 2013 has been derived from the audited financial statements at December 31, 2012, but does not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the financial position and results of operations of Cytori Therapeutics, Inc., and our subsidiaries (the Company) have been included. Operating results for the three and six months ended June 30, 2013 are not necessarily indicative of the results that may be expected for the year ending December 31, 2013. These financial statements should be read in conjunction with the consolidated financial statements and notes therein included in our annual report on Form 10-K for the year ended December 31, 2012.

**2. Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions affecting the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Our most significant estimates and critical accounting policies involve recognizing revenue, valuing the acquisition of the Olympus-Cytori Joint Venture, valuing warrants, determining the assumptions used in measuring share-based compensation expense and valuing allowances for doubtful accounts and inventories.

Actual results could differ from these estimates. Management's estimates and assumptions are reviewed regularly, and the effects of revisions are reflected in the consolidated financial statements in the periods they are determined to be necessary.

**3. Capital Availability**

We incurred net losses of \$3,211,000 and \$10,877,000 for the three and six months ended June 30, 2013 and \$7,883,000 and \$17,208,000 for the three and six months ended June 30, 2012, respectively. We have an accumulated deficit of \$285,605,000 as of June 30, 2013. Additionally, we have used net cash of \$17,014,000 and \$15,958,000 to fund our operating activities for the six months ended June 30, 2013 and 2012, respectively. To date, these operating losses have been funded primarily from outside sources of invested capital and gross profits. During 2012 and 2013, we expanded our commercialization activities while simultaneously pursuing available financing sources to support operations and growth.

We have had, and we will likely continue to have, an ongoing need to raise additional cash from outside sources to fund our future operations.

Subsequent to the quarter ended June 30<sup>th</sup>, 2013, we entered into a Sale and Exclusive License/Supply Agreement with Bimini Technologies LLC ("Bimini"), pursuant to which we sold to Bimini substantially all of the assets (other than certain retained rights and licenses) of our Puregraft® product line, a series of standalone fat transplantation products that were developed to improve the predictability of outcomes for autologous fat grafting and aesthetic body contouring. The aggregate value of the consideration paid by Bimini at the execution of the agreement was \$5.0 million.

We believe we have sufficient cash to fund operations through November 30, 2013, which includes minimum liquidity requirements of the Loan and Security Agreement, which requires us to maintain at least three months of cash on hand. We restructured our debt in June 2013, which resulted in additional proceeds along with extended terms of the loan and deferral of principal payments for twelve months. At November 30, 2013, absent additional funding, our cash balance may be less than the minimum liquidity amount required by the lenders in the Loan and Security Agreement. In order to fund operations and our continued commercialization efforts through the next twelve months, we are pursuing additional funding through either strategic corporate partnerships or future issuances of equity or debt securities in addition to our gross profits. We have an established history of raising capital through all these platforms, and are currently involved in negotiations with multiple parties. In the absence of sufficient positive cash flows from operations, no assurance can be given that we can generate sufficient revenue to cover operating costs or that additional financing will be available to us and, if available, on terms acceptable to us in the future.

Without this additional capital, cash generated from sales and containment of costs will not provide adequate funding indefinitely at their current levels. If we cannot raise sufficient capital, we would need to reduce our research, development, and administrative operations, including reductions of our employee base and the deferral of ongoing development projects, to focus almost entirely on the supply of current products to existing distribution channels and our thermal burn contract arrangement with BARDA. As a result, such reductions would negatively affect our ability to achieve certain other corporate goals.

#### 4. Transactions with Olympus Corporation

##### *Acquisition of Olympus' Interest in the Joint Venture*

In 2005, we entered into a joint venture and other related agreements (the "Joint Venture Agreements") with Olympus. The Joint Venture was owned equally by Olympus and us. We had previously accounted for our interests in the Joint Venture using the equity method of accounting, since we could not exert significant influence over the Joint Venture's operations.

On May 8, 2013, Cytori and Olympus agreed to terminate the Olympus-Cytori Joint Venture (Termination Agreement), and Cytori acquired the remaining 50% equity interest in the Joint Venture from Olympus. The termination of the relationship and purchase of the Olympus' equity shares of the Joint Venture allows Cytori to regain full control of the manufacturing rights for the Celution ® system. The purpose of the acquisition is to gain more flexibility on the manufacturing process and associated costs, enable higher margins, and speed the transition to the critical next-generation systems. In connection with the Termination Agreement, the assets acquired, liabilities assumed, and the Company's previously held equity interest were recorded at fair value. For valuation purposes Cytori determined the acquisition date (the date on which Cytori effectively gained full control of the equity interest previously held by Olympus) to be May 27, 2013. The remeasurement of the previously held equity interest at the acquisition date resulted in a net gain of \$4,892,000 that was recorded in the accompanying consolidated condensed statements of operations.

As consideration for the Termination Agreement, Cytori can choose from alternative payment options as defined in the Termination Agreement. The payment options call for a minimum of \$4,500,000 up to a maximum of \$16,000,000 to be paid by Cytori to Olympus in installments over periods ranging from one year to six years depending on the option selected by the Company. Installment payments will be calculated quarterly based on 5% of Cytori's gross sales receipts for all products sold. If Cytori receives an aggregate \$35,000,000 in cash through strategic or financing arrangements during the first year of the Termination Agreement, Cytori will pay \$4,500,000 upon request of Olympus as full and complete consideration under the Agreement.

The fair value of the Joint Venture, including the identified intangible assets acquired, consideration transferred, and Cytori's previously held equity interest, was estimated from a market participant perspective, using valuation techniques based on the income approach for measuring fair value. Specifically, an excess earnings methodology was employed using primarily Level 3 fair value inputs. The intangible assets acquired consisted primarily of contractual license rights that had previously enabled the Joint Venture to conduct development and manufacturing activities pertaining to certain aspects of Cytori's Celution ® technology. The useful life of the identifiable intangible assets was estimated based on the assumed future economic benefit expected to be received from the assets. Inputs used in the valuation included various market participant assumptions in order to project potential future cash flows, discounted at a rate commensurate with the risk involved.

	<b><u>Useful Life</u></b> <b><u>(in years)</u></b>	<b><u>Estimated</u></b> <b><u>Fair Value</u></b>
Intangible assets:		
Developed technology	7	\$ 9,394,000

The Company calculated the fair value of the purchase consideration on the acquisition date to be \$4,928,000. This was determined using a weighted probability assessment of the payment options available to Cytori. Present value risk-adjusted discount rates applied to the purchase consideration ranged from 9.75% to 12.75%. The fair value calculation of the purchase consideration resulted in a discount of \$1,072,000, which will be amortized to interest expense over a weighted average expected term of 1.8 years. On a quarterly basis, the Company will reassess the probabilities of the various payment options and expected term. Changes in the expected term and the remaining discount amount as a result of the reassessment will be recognized prospectively as an adjustment to interest expense. Upon final settlement of the purchase obligation, any difference between the amount paid and the carrying amount of the purchase obligation will be recorded as a gain or loss on extinguishment of the liability.



There was no revenue or earnings from the Joint Venture included in our consolidated results subsequent to the date of acquisition. Had the acquisition occurred on January 1, 2013, consolidated revenue would not have been affected, but our consolidated net loss would have been reduced by \$48,000, the amount of our year to date equity loss from investment in Joint Venture.

The following table summarizes the fair value of the assets acquired and liabilities assumed at the date of acquisition (in thousands):

	<b>Estimated Fair Value</b>
Current assets	\$ 236
Property and equipment	260
Intangible assets	9,394
<b>Total assets acquired</b>	<b>9,890</b>
Accrued and other current liabilities	(33)
<b>Total fair value of the Joint Venture</b>	<b>\$ 9,857</b>

Acquisition-related transaction costs are not included as components of consideration transferred but have been accounted for as expenses in the period in which the costs are incurred.

#### *Put/Calls and Guarantees*

Prior to the termination of the Joint Venture the Shareholders' Agreement between Cytori and Olympus provided that in certain specified circumstances of our insolvency or if we experienced a change in control, Olympus would have the rights to (i) repurchase our interests in the Joint Venture at the fair value of such interests or (ii) sell its own interests in the Joint Venture to Cytori (the "Put") at the higher of (a) \$22,000,000 or (b) the Put's fair value.

At December 31, 2012, the estimated fair value of the Put was \$2,250,000. The Put, as a previously existing contractual relationship between Olympus and Cytori, was cancelled as a result of the Joint Venture termination in May 2013 and therefore its related fair value decreased to zero as a result of the termination. Fluctuations in the Put value are recorded in the consolidated condensed statements of operations as a component of change in fair value of option liabilities.

## 5. Warrant Liability

Warrants with exercise price reset features (down-round protection) are accounted for as liabilities, with changes in fair value included in net loss. The fair value of the liability associated with the warrants with this reset feature decreased to \$0 as of June 30, 2013 and \$84,000 and \$418,000 in gains from the change in fair value of warrants were recorded for the three and six months ended June 30, 2013, whereas we recorded \$251,000 and \$381,000 in losses for the three and six months ended June 30, 2012.

All changes in the fair value of the warrants are recognized currently in earnings until such time as the warrants are exercised or expire in August 2013. These warrants are not traded in an active securities market, and as such, we estimated the fair value of these warrants using an option pricing model with the following assumptions:

	<b>As of June 30, 2013</b>	<b>As of December 31, 2012</b>
Expected term	0.12 years	0.61 years
Common stock market price	\$ 2.30	\$ 2.80
Risk-free interest rate	0.02%	0.11%
Expected volatility	41.58%	73.88%
Resulting fair value (per warrant)	\$ 0.00	\$ 0.20

Expected volatility is based primarily on historical volatility. Historical volatility was computed using daily pricing observations for recent periods that correspond to the expected term of the warrants. We believe this method produces an estimate that is representative of our expectations of future volatility over the expected term of these warrants. We currently have no reason to believe future volatility over the expected remaining life of these warrants is likely to differ materially from historical volatility. The expected life is based on the remaining contractual term of the warrants. The risk-free interest rate is the interest rate for treasury constant maturity instruments published by the Federal Reserve Board that is closest to the expected term of the warrants. The fair value of these warrants also incorporates our assumptions about future equity issuances and their impact to the down-round protection feature.

Fluctuations in the fair value of the warrants are impacted by unobservable inputs, most significantly the assumption with regards to future equity issuances and its impact to the down-round protection feature. Significant increases (decreases) in this input in isolation would result in a significantly higher (lower) fair value measurement.

## 6. Long-term Debt

On June 28, 2013 we entered into a Loan and Security Agreement (Loan Agreement) with Oxford Finance LLC and Silicon Valley Bank (together, the "Lenders"), pursuant to which the Lenders funded an aggregate principal amount of \$27.0 million (Term Loans), subject to the terms and conditions set forth in the loan agreement. The Term Loan accrues interest at a fixed rate of 9.75% per annum. Pursuant to the Loan Agreement, we are required to make interest only payments through July 1, 2014 and thereafter we are required to make payments of principal and accrued interest in equal monthly installments sufficient to amortize the Term Loans through July 1, 2017, the maturity date. However, if we achieve a specified revenue threshold for the period of 12 months from the date of the loan agreement through June 30, 2014, the interest only period will be extended to February 1, 2015. All unpaid principal and interest with respect to the Term Loans is due and payable in full on July 1, 2017. At maturity of the Term Loans, or earlier repayment in full following voluntary prepayment or upon acceleration, the Company is required to make a final payment fee in an aggregate amount equal to \$1,620,000. In connection with the Term Loans, on June 28, 2013, we issued to the Lenders warrants to purchase up to an aggregate of 596,553 shares of our common stock at an exercise price of \$2.26 per share. These warrants are immediately exercisable and will expire on June 28, 2020.

In connection with the Loan Agreement, we prepaid all outstanding amounts under the prior loan agreement, at which time the Company's obligations under the prior loan agreement immediately terminated. The Company paid to the prior agent and the prior lenders approximately \$18,866,000, consisting of the then outstanding principal balance due of approximately \$17,325,000, accrued but unpaid interest of approximately \$119,000, a final payment fee (net of fees waived or refunded by the Lenders under the new loan agreement) of approximately \$1,078,000, a prepayment fee (net of fees waived or refunded by the Lenders under the new loan agreement) of approximately \$312,000 and other customary lender fees and expenses.

The net proceeds of the Term Loans, after payment of lender fees and expenses and prepaying all the outstanding amounts relating to the prior loan agreement, were approximately \$7.8 million.

For the continuing Lenders, we accounted for this amendment as a debt modification. Accordingly, related fees of \$1,942,000 were recorded as debt discount, and along with the unamortized debt discount will be amortized as an adjustment of interest expense using the effective interest method. For one existing lender that did not participate in the Term Loans, the payoff of their loan was accounted for as debt extinguishment. Accordingly, a loss on debt extinguishment of \$708,000 was recorded, which includes that lender's portion of unamortized fees and discounts along with prepayment and final payment fees.

We allocated the aggregate proceeds of the Term Loans between the warrants and the debt obligations based on their relative fair values. The fair value of the warrants issued to the Lenders was calculated utilizing the Black-Scholes option pricing model. We are amortizing the resulting additional discount of \$949,000 to interest expense over the term of the loan using the effective interest method. The overall effective interest rate for the Term Loans is 13.92%. The Term Loans are collateralized by the tangible assets of the company, including a security interest in substantially all of its existing and after-acquired assets.

## 7. Revenue Recognition

### *Product Sales*

We recognize revenue from product sales when the following fundamental criteria are met: (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred, (iii) the price to the customer is fixed or determinable and (iv) collection of the resulting accounts receivable is reasonably assured.

For all sales, we use a binding purchase order or a signed agreement as evidence of an arrangement. Revenue for these product sales is recognized upon delivery to the customer, as all risks and rewards of ownership have been substantively transferred to the customer at that point. For sales to customers who arrange for and manage the shipping process, we recognize revenue upon shipment from our facilities. Shipping and handling costs that are billed to our customers are classified as revenue. The customer's obligation to pay and the payment terms are set at the time of delivery and are not dependent on the subsequent use or resale of our products.

For sales that include multiple deliverables, such as sales of our StemSource® Cell Bank (cell bank), we account for products or services (deliverables) separately rather than as a combined unit. Stem cell banks typically consist of a complex array of equipment, proprietary knowledge, license rights, and services, including one or more StemSource® devices, a cryogenic freezer, measuring and monitoring equipment, and a database patient tracking system. In addition, we typically provide consulting, installation, and training services. Web hosting, technical support and maintenance services are generally provided for a period of up to one year subsequent to the date of sale. FASB authoritative guidance requires an evaluation of these deliverables to determine the appropriate “units of accounting” for purposes of revenue recognition. Each cell bank is customized to provide the best solution for the customer. Depending on customers’ needs, all or combination of the following units of accounting will apply to cell bank transactions:

- initial consulting services;
- license rights and standard operating procedures;
- equipment and supplies;
- installation services;
- training services;
- database hosting services;
- technical support services; and
- maintenance services.

FASB authoritative guidance establishes a selling price hierarchy for determining the selling price of a deliverable, which is based on: (a) vendor-specific objective evidence (“VSOE”); (b) third-party evidence (“TPE”); or (c) management estimates. This guidance requires arrangement consideration to be allocated at the inception of the arrangement to all deliverables using the relative selling price method. For our cell bank sales, we establish relative selling prices for all deliverables based on vendor-specific quotes for comparable services when available. In the absence of VSOE, we use competitors’ products or services considered largely interchangeable with our own or management’s best estimate. Revenue allocated to each unit of accounting is calculated and recognized based on the relative selling price of each deliverable. Future services such as web hosting and ongoing maintenance are deferred and recognized into income as the services are provided, generally over one year following the installation of the equipment.

#### *Concentration of Significant Customers*

Two distributors comprised 38% of our revenue recognized for the six months ended June 30, 2013. Two direct customers and two distributors accounted for 58% of total outstanding accounts receivable as of June 30, 2013.

One direct customer comprised 21% of our revenue recognized for the six months ended June 30, 2012. Three direct customers accounted for 52% of total outstanding accounts receivable as of June 30, 2012.

Product revenues, classified by geographic location, are as follows:

	<b>Six months ended</b>			
	<b>June 30, 2013</b>		<b>June 30, 2012</b>	
	Product Revenues	% of Total	Product Revenues	% of Total
North America	\$ 583,000	21%	\$ 487,000	14%
Japan	1,487,000	53%	1,749,000	51%
Europe	625,000	22%	619,000	18%
Other countries	105,000	4%	572,000	17%
<b>Total product revenues</b>	<b>\$ 2,800,000</b>	<b>100%</b>	<b>\$ 3,427,000</b>	<b>100%</b>

#### *Research and Development*

We earn revenue for performing tasks under research and development agreements with both commercial enterprises, such as Olympus and Senko, and governmental agencies like the U.S. Department of Health and Human Service’s Biomedical Advanced Research and Development Authority (BARDA).

Revenue earned under development agreements with commercial enterprises is classified as development revenues. Revenues derived from reimbursement of direct out-of-pocket expenses for research costs associated with government contracts are recorded as government contract and other within development revenues. Government contract revenue is recorded at the gross amount of the reimbursement. The costs associated with these reimbursements are reflected as a component of research and development expense in our statements of operations.

In the third quarter of 2012, we were awarded a contract to develop a new countermeasure for thermal burns valued at up to \$106 million with BARDA. The initial base period includes \$4.7 million over two years and covers preclinical research and continued development of Cytori's Celution® system to improve cell processing. The additional contract options, if fully executed, cover clinical development through FDA approval under a device-based PMA regulatory pathway. This is a cost reimbursement contract and related government contract revenue was recorded at the gross amount of reimbursement starting in the fourth quarter of 2012.

We received funds from Olympus and Olympus-Cytori, Inc. during 2005 and 2006. We recorded upfront fees totaling \$28,311,000 as deferred revenues, related party. In exchange for these proceeds, we agreed to (a) provide Olympus-Cytori, Inc. an exclusive and perpetual license to our Celution® System device technology and certain related intellectual property, and (b) provide future development contributions related to commercializing the Celution® System platform. The license and development services were not separable and as a result the recognition of this deferred amount as revenue required achievement of service related milestones, under a proportional performance methodology. Revenue was recognized as the above mentioned R&D milestones were completed. Of the amounts received and deferred, we recognized the last remaining development revenue of \$638,000 during the three months ended March 31, 2013 as a result of the United States Court of Appeals upholding the FDA's previous determination that our cell processing devices were not substantially equivalent to the cited predicate devices. The recognition of revenue associated with this event reflects the completion of our efforts expended to use commercially reasonable efforts to obtain device regulatory approvals in the United States as it pertains to the 510(k) pathway. During 2012, we recognized \$2,413,000 for the three and six months ended June 30, 2012 as a result of completion of two remaining clinical milestones for the APOLLO and PRECISE clinical trials. As of June 30, 2013, there are no deferred amounts under this contract.

Refer to Note 13 for discussion about our arrangement with Senko.

## 8. Inventories

Inventories are carried at the lower of cost or market, determined on the first-in, first-out (FIFO) method.

Inventories consisted of the following:

	<u>June 30,</u> <u>2013</u>	<u>December 31,</u> <u>2012</u>
Raw materials	\$ 1,683,000	\$ 1,384,000
Work in process	742,000	404,000
Finished goods	1,587,000	1,387,000
	<u>\$ 4,012,000</u>	<u>\$ 3,175,000</u>

## 9. Share-Based Compensation

### Stock Options

During the first quarter of 2013, we issued to our directors and executive officers options to purchase an aggregate of 1,897,000 shares of our common stock, with four-year vesting for our officers and two-year vesting for our directors. The grant date fair value of the awards granted to our officers was \$1.80 per share for options with an exercise price of \$2.74 (which was the fair market value of our common stock on the date of grant) and \$1.49 per share for options with an exercise price of \$5.00, respectively. The grant date fair value of the awards granted to our directors was \$1.84 per share for options with an exercise price of \$2.80 (which was the fair market value of our common stock on the date of grant). The resulting share-based compensation expense of \$3,235,000, net of estimated forfeitures, will be recognized as expense over the respective vesting periods.

During the first quarter of 2013, we issued a grant to our non-executive employees options to purchase an aggregate of 552,350 shares of our common stock, with four-year vesting. The grant date fair values of the awards \$1.92 per share and \$1.64 per share, respectively, due to the awards being granted on two different dates. The resulting share-based compensation expense of \$974,000, net of estimated forfeitures, will be recognized as expense over the respective vesting periods.

During the first quarter of 2012, we issued to our directors and executive officers options to purchase an aggregate of 690,000 shares of our common stock, with four-year vesting for our officers and two-year vesting for our directors. The grant date fair value of the awards granted to our officers was \$2.10 per share and to our directors was \$1.35 per share. The resulting share-based compensation expense of \$1,373,000, net of estimated forfeitures, will be recognized as expense over the respective vesting periods.

**Restricted Stock Awards**

During the first quarter of 2012, we issued to our executive officers 190,000 shares of restricted stock. The stock award vested on January 10, 2013 and the resulting share-based compensation expense of \$654,000 was recognized as expense.

**Performance-Based Restricted Stock Awards**

In January 2012, we granted 276,375 performance-based restricted stock awards under the 2004 Equity Incentive Plan. The awards provide certain employees until December 31, 2012 to achieve certain performance goals established by the Compensation Committee. In January 2013, the Compensation Committee modified the awards to allow a portion of the awards to continue vesting based on partial achievement of the performance goals. As a result of this modification, 86,229 shares with fair value of \$2.74 per share will continue vesting under the modified terms of the grant that would have been cancelled under the original terms. Since we have not recognized any expense relating to these shares through December 31, 2012, additional compensation expense \$236,000 resulting from this modification will be recognized from the modification date through the vesting date of January 2014. We recognized \$90,000 and \$160,000 of compensation expense related to performance-based awards during the three and six months ended June 30, 2013.

**10. Loss per Share**

Basic per share data is computed by dividing net income or loss applicable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted per share data is computed by dividing net income or loss applicable to common stockholders by the weighted average number of common shares outstanding during the period increased to include, if dilutive, the number of additional common shares that would have been outstanding as calculated using the treasury stock method. Potential common shares were related entirely to outstanding but unexercised options and warrants for all periods presented.

We have excluded all potentially dilutive securities, including unvested performance-based restricted stock, from the calculation of diluted loss per share attributable to common stockholders for the three months ended March 31, 2013 and 2012, as their inclusion would be antidilutive. Potentially dilutive common shares excluded from the calculations of diluted loss per share were 19,536,812 for the three and six month periods ended June 30, 2013 and 18,401,231 for the three and six month periods ended June 30, 2012, respectively.

**11. Accumulated Other Comprehensive Loss**

During the first quarter of 2013, we determined that the functional currency of our Japanese subsidiary changed from the US Dollar to the Japanese Yen due to significant changes in economic facts and circumstances of our Japan subsidiary. As a result of this change, a portion of the foreign exchange gain or loss will be classified as foreign currency translation adjustments within other comprehensive income or loss. Our comprehensive loss includes net loss and foreign currency translation adjustments. See the unaudited consolidated condensed statements of operations and comprehensive loss for the effect of foreign currency translation adjustments.

The components of accumulated other comprehensive loss are as follows:

	<b>For the three months ended June 30, 2013</b>		<b>For the six months ended June 30, 2013</b>	
	<b>Foreign currency translation adjustments</b>	<b>Accumulated other comprehensive loss</b>	<b>Foreign currency translation adjustments</b>	<b>Accumulated other comprehensive loss</b>
Beginning balance	\$ (110,000)	\$ (110,000)	\$ —	\$ —
Net current period other comprehensive income (loss)	76,000	76,000	(34,000)	(34,000)
Ending balance	<u>\$ (34,000)</u>	<u>\$ (34,000)</u>	<u>\$ (34,000)</u>	<u>\$ (34,000)</u>

## 12. Commitments and Contingencies

We have entered into agreements with various research organizations for pre-clinical and clinical development studies, which have provisions for cancellation. Under the terms of these agreements, the vendors provide a variety of services including conducting research, recruiting and enrolling patients, monitoring studies and data analysis. Payments under these agreements typically include fees for services and reimbursement of expenses. The timing of payments due under these agreements was estimated based on current schedules of pre-clinical and clinical studies in progress. As of June 30, 2013, we have pre-clinical research study obligations of \$23,000 (all of which are expected to be complete within a year) and clinical research study obligations of \$12,000,000 (\$3,650,000 of which are expected to be complete within a year). Should the timing of the pre-clinical and clinical trials change, the timing of the payment of these obligations would also change.

During 2008, we entered into a supply agreement with a minimum purchase requirements clause. As of June 30, 2013, we have minimum purchase obligations of \$850,000 (all of which are expected to be paid within a year).

We have entered into several lease agreements for our headquarters office location as well as international office locations. As of June 30, 2013, we have remaining lease obligations of \$8,510,000 (\$2,184,000 of which are expected to be completed within a year).

We are subject to various claims and contingencies related to legal proceedings. Due to their nature, such legal proceedings involve inherent uncertainties including, but not limited to, court rulings, negotiations between affected parties and governmental actions. Management assesses the probability of loss for such contingencies and accrues a liability and/or discloses the relevant circumstances, as appropriate. Management believes that any liability to us that may arise as a result of currently pending legal proceedings will not have a material adverse effect on our financial condition, liquidity, or results of operations as a whole.

Refer to note 6 for a discussion of our commitments and contingencies related to our long-term obligations.

Refer to note 4 for a discussion of our commitments and contingencies related to our transactions with Olympus.

Refer to note 13 for a discussion of our commitments and contingencies related to our arrangements with Senko.

## 13. Thin Film Japan Distribution Agreement

In 2004, the Company entered into a Distribution Agreement with Senko. Under this agreement, we granted to Senko an exclusive license to sell and distribute certain Thin Film products in Japan and are responsible for the completion of the initial regulatory application to the MHLW and commercialization of the Thin Film product line in Japan. The Distribution Agreement with Senko commences upon "commercialization." Essentially, commercialization occurs when one or more Thin Film product registrations are completed with the MHLW. At the inception of this arrangement, we received a \$1,500,000 license fee which was recorded as deferred revenues in 2004. Half of the license fee was refundable if the parties agree commercialization is not achievable and a proportional amount was refundable if we terminate the arrangement, other than for material breach by Senko, before three years post-commercialization. We have also received \$1,250,000 in milestone payments from Senko.

In February 2013, we entered into a mutual termination and release agreement with Senko, whereby the Distribution Agreement and all Senko rights, licenses and privileges granted under the Distribution Agreement terminated and reverted to the Company. As a result of this Termination Agreement, we are obligated to pay Senko \$1,200,000 in six quarterly installment payments of \$200,000 each through May 2014. At the time of the Termination Agreement, we had a balance of \$2,379,000 in deferred revenues on our balance sheet relating to the payments received from Senko in the past pursuant to the Distribution Agreement. At the time of the Termination Agreement we accrued \$1,200,000 of the termination fee, and recognized the remaining \$1,179,000 in development revenues which reflects the Company's efforts towards commercialization under the agreement.

During the three and six months ended June 30, 2013, our aggregate installment payments paid were \$200,000 and \$400,000, respectively. As of June 30, 2013 we have a remaining termination fee obligation of \$800,000.

## 14. Fair Value Measurements

Fair value measurements are market-based measurements, not entity-specific measurements. Therefore, fair value measurements are determined based on the assumptions that market participants would use in pricing the asset or liability. We follow a three-level hierarchy to prioritize the inputs used in the valuation techniques to derive fair values. The basis for fair value measurements for each level within the hierarchy is described below:

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs are observable in active markets.
- Level 3: Valuations derived from valuation techniques in which one or more significant inputs are unobservable in active markets.

The following table provides a summary of the recognized assets and liabilities that we measure at fair value on a recurring basis:

	Balance as of June 30, 2013	Basis of Fair Value Measurements		
		Level 1	Level 2	Level 3
<b>Assets:</b>				
Cash equivalents	\$ 4,644,000	\$ 4,644,000	\$ —	\$ —
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ —	\$ —	\$ —
	Balance as of December 31, 2012	Basis of Fair Value Measurements		
		Level 1	Level 2	Level 3
<b>Assets:</b>				
Cash equivalents	\$ 6,145,000	\$ 6,145,000	\$ —	\$ —
<b>Liabilities:</b>				
Put option liability	\$ (2,250,000)	\$ —	\$ —	\$ (2,250,000)
Warrant liability	\$ (418,000)	\$ —	\$ —	\$ (418,000)

We use quoted market prices to determine the fair value of our cash equivalents, which consist of money market funds that are classified in Level 1 of the fair value hierarchy.

We valued our put liability using an option pricing theory based simulation analysis (i.e., a Monte Carlo simulation). Because some of the inputs to our valuation model are either not observable quoted prices or are not derived principally from or corroborated by observable market data by correlation or other means, the put option liability is classified as Level 3 in the fair value hierarchy.

The following table summarizes the change in our Level 3 put option liability value:

<b>Put option liability</b>	Three months ended	Six months ended
	June 30, 2013	June 30, 2013
Beginning balance	\$ (2,500,000)	\$ (2,250,000)
Decrease in fair value recognized in operating expenses	2,500,000	2,250,000
Ending balance	\$ —	\$ —
<b>Put option liability</b>	Three months ended	Six months ended
	June 30, 2012	June 30, 2012
Beginning balance	\$ (1,640,000)	\$ (1,910,000)
Increase in fair value recognized in operating expenses	(460,000)	(190,000)
Ending balance	\$ (2,100,000)	\$ (2,100,000)

Common stock purchase warrants issued in connection with our August 2008 private equity placement do not trade in an active securities market, and as such, we estimate the fair value of these warrants using the option pricing model (see note 5). Some of the significant inputs are observable in active markets, such as common stock market price, volatility, and risk free rate. The fair value of these warrants also incorporate our assumptions about future equity issuances and their impact to the down-round protection feature. Because some of the inputs to our valuation model are either not observable quoted prices or are not derived principally from or corroborated by observable market data by correlation or other means, the warrant liability is classified as Level 3 in the fair value hierarchy.

The following table summarizes the change in our Level 3 warrant liability value:

<b>Warrant liability</b>	Three months ended	Six months ended
	June 30, 2013	June 30, 2013
Beginning balance	\$ (84,000)	\$ (418,000)
Decrease in fair value recognized in operating expenses	84,000	418,000
Ending balance	\$ —	\$ —

<b>Warrant liability</b>	<b>Three months ended</b>	<b>Six months ended</b>
	<b>June 30, 2012</b>	<b>June 30, 2012</b>
Beginning balance	\$ (757,000)	\$ (627,000)
Increase in fair value recognized in operating expenses	(251,000)	(381,000)
Ending balance	<u>\$ (1,008,000)</u>	<u>\$ (1,008,000)</u>

The Company measures the fair value of its assets acquired and liabilities assumed in business acquisition. See Note 4 for discussion of fair value measurements of certain assets recorded at fair value on a non-recurring basis.

No other assets or liabilities are measured at fair value on a recurring basis, or have been measured at fair value on a non-recurring basis subsequent to initial recognition, on the accompanying consolidated condensed balance sheet as of June 30, 2013.

## 15. Fair Value

### Financial Instruments

We disclose fair value information about all financial instruments, whether or not recognized in the balance sheet, for which it is practicable to estimate fair value. The disclosures of estimated fair value of financial instruments at June 30, 2013 and December 31, 2012, were determined using available market information and appropriate valuation methods. Considerable judgment is necessary to interpret market data and develop estimated fair value. The use of different market assumptions or estimation methods may have a material effect on the estimated fair value amounts.

The carrying amounts for cash and cash equivalents, accounts receivable, inventories, other current assets, accounts payable, accrued expenses and other liabilities approximate fair value due to the short-term nature of these instruments.

We utilize quoted market prices to estimate the fair value of our fixed rate debt, when available. If quoted market prices are not available, we calculate the fair value of our fixed rate debt based on a currently available market rate assuming the loans are outstanding through maturity and considering the collateral. In determining the current market rate for fixed rate debt, a market spread is added to the quoted yields on federal government treasury securities with similar terms to the debt.

At June 30, 2013 and December 31, 2012, the aggregate fair value and the carrying value of the Company's fixed rate long-term debt were as follows:

	<b>June 30, 2013</b>		<b>December 31, 2012</b>	
	<b>Fair Value</b>	<b>Carrying Value</b>	<b>Fair Value</b>	<b>Carrying Value</b>
Fixed rate long-term debt	\$ 25,516,000	\$ 25,678,000	\$ 22,425,000	\$ 22,608,000

Carrying value is net of debt discount of \$2,942,000 and \$917,000 as of June 30, 2013 and December 31, 2012, respectively.

The fair value of debt is classified as Level 3 in the fair value hierarchy as some of the inputs to our valuation model are either not observable quoted prices or are not derived principally from or corroborated by observable market data by correlation or other means.

## 16. Stockholders' Equity

### Common Stock

On December 13, 2010 we raised \$10,000,000 in gross proceeds from a sale of 1,428,571 shares of unregistered common stock to Astellas Pharma Inc. for \$7.00 per share in a private stock placement. Pursuant to the terms of the purchase agreement, we granted Astellas Pharma Inc. a two year right of first refusal to enter into a development and commercialization collaboration with us regarding the use of our technology, on a worldwide basis, for the treatment of liver conditions. In addition, we have agreed to use reasonable efforts to file a registration statement with the Securities and Exchange Commission to register the shares of common stock for resale upon the request of Astellas Pharma Inc. We also granted Astellas Pharma Inc. a non-voting observer seat on our Board of Directors and the right to designate a representative member to our Scientific Advisory Board. The \$10,000,000 in total proceeds we received exceeded the market value of our stock at the completion of the purchase agreement. The \$2,526,000 difference between the proceeds received and the fair market values of our common stock was recorded as a component of deferred revenues in the accompanying balance sheet. This difference was recorded as deferred revenue since, conceptually, the excess proceeds represent a value paid by Astellas Pharma Inc. attributable to the scientific advisory board seat, the non-voting observer seat on our Board of Directors, and the two year right of first refusal to enter into a development and commercialization collaboration with us regarding the use of our technology, on a worldwide basis, for the treatment of liver conditions, rather than an additional equity investment in Cytari. We recognized this deferred amount as development revenue upon the expiration of the two year period in December 2012. We are still actively involved in discussions with Astellas Pharma, Inc. about a potential future development and commercialization collaboration with us.



In December 2012, we entered into an underwriting agreement with Lazard Capital Markets, LLC (underwriter), relating to the issuance and sale of 7,020,000 shares of our common stock. The price to the public in this offering was \$2.85 per share and the underwriter purchased the shares from us at a price of \$2.69 per share. The transaction was completed on December 19, 2012 raising approximately \$20,007,000 in gross proceeds before deducting underwriting discounts and commissions and other offering expenses payable by us. Under the terms of the underwriting agreement, we granted the underwriter an option, exercisable for 30 days, to purchase up to an additional 1,053,000 shares. Subsequently, in January 2013, the underwriter exercised this option and as a result we sold an additional 1,053,000 shares raising approximately \$3,001,000 in gross proceeds before deducting underwriting discounts and commissions and other offering expenses payable by us.

### **Warrant Adjustments**

Our March 2009 offering of 4,771,174 shares of our common stock and warrants to purchase up to a total of 6,679,644 additional shares of our common stock with an exercise price of \$2.59 per share, our May 2009 equity offering of 1,864,783 shares of our common stock and warrants to purchase up to a total of 3,263,380 additional shares of our common stock with an exercise price of \$2.62 per share, our closings with Seaside 88, LP, our October 2010 offering of 4,600,000 shares of our common stock, our December 2010 sale of 1,428,571 shares of our common stock, our December 2012 offering of 7,020,000 shares of our common stock and our January 2013 sale of 1,053,000 shares of our common stock triggered an adjustment to the exercise price and number of shares issuable under the warrants issued to investors in our August 2008 private placement financing. As a result, as of June 30, 2013, the common stock warrants issued on August 11, 2008 are currently exercisable for 2,149,062 shares of our common stock at an exercise price of \$5.39 per share.

### **Other Related Party Transactions**

During the year ended December 31, 2012, Green Hospital, Inc.'s beneficial ownership decreased to be less than five percent of our outstanding shares of common stock.

During the three and six months ended June 30, 2013, we incurred approximately \$0 and \$45,000, respectively, and \$24,000 and \$51,000 during the three and six months ended June 30, 2012, respectively, in royalty costs in connection with sales of our Celution® 800/CRS System products to the European and Asia-Pacific reconstructive surgery market, pursuant to our License and Royalty Agreement and the Amended License/Commercial Agreement with the Olympus-Cytori, Inc. Joint Venture. Additionally, in February 2012, we purchased second generation Celution® Systems and consumable sets from the Olympus-Cytori, Inc. Joint Venture, at a formula-based transfer price aggregating to \$1,048,000. As of June 30, 2013 and December 31, 2012, Olympus Corporation was a beneficial owner of more than five percent of our outstanding shares of common stock. Refer to note 4 for discussion of the termination of the Olympus-Cytori Joint Venture.

## **17. Subsequent Events**

On July 30, 2013, we entered into a Sale and Exclusive License/Supply Agreement with Bimini Technologies LLC ("Bimini"), pursuant to which we sold to Bimini substantially all of the assets (other than certain retained rights and licenses) of our Puregraft® product line (the "Sale"), a series of standalone fat transplantation products that were developed to improve the predictability of outcomes for autologous fat grafting and aesthetic body contouring (the "Puregraft Products"). The aggregate value of the consideration paid by Bimini to the Company at the closing of the Sale was \$5.0 million. In addition, Bimini is obligated to make certain milestone payments to the Company (in an aggregate amount of up to \$10.0 million), contingent upon the achievement of certain milestones relating to Bimini's gross profits from sales of the Puregraft Products.

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

Our Management’s Discussion and Analysis of Financial Condition and Results of Operations (MD&A) includes the following sections:

- Overview that discusses our operating results and some of the trends that affect our business.
- Results of Operations that includes a more detailed discussion of our revenue and expenses.
- Liquidity and Capital Resources which discusses key aspects of our statements of cash flows, changes in our financial position and our financial commitments.
- Significant changes since our most recent Annual Report on Form 10-K in the Critical Accounting Policies and Significant Estimates that we believe are important to understanding the assumptions and judgments underlying our financial statements.

You should read this MD&A in conjunction with the financial statements and related notes in Item 1 and our Annual Report on Form 10-K for the fiscal year ended December 31, 2012.

### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

*This report contains certain statements that may be deemed “forward-looking statements” within the meaning of United States of America securities laws. All statements, other than statements of historical fact, that address activities, events or developments that we intend, expect, project, believe or anticipate and similar expressions or future conditional verbs such as will, should, would, could or may occur in the future are forward-looking statements. Such statements are based upon certain assumptions and assessments made by our management in light of their experience and their perception of historical trends, current conditions, expected future developments and other factors they believe to be appropriate.*

*These statements include, without limitation, statements about our anticipated expenditures, including those related to clinical research studies and general and administrative expenses; the potential size of the market for our products, future development and/or expansion of our products and therapies in our markets, our ability to generate product revenues or effectively manage our gross profit margins; our ability to obtain regulatory clearance; expectations as to our future performance; the “Liquidity and Capital Resources” section of this report, including our potential need for additional financing and the availability thereof; and the potential enhancement of our cash position through development, marketing, and licensing arrangements. Our actual results will likely differ, perhaps materially, from those anticipated in these forward-looking statements as a result of various factors, including: our need and ability to raise additional cash, our joint ventures, risks associated with laws or regulatory requirements applicable to us, market conditions, product performance, potential litigation, and competition within the regenerative medicine field, to name a few. The forward-looking statements included in this report are subject to a number of additional material risks and uncertainties, including but not limited to the risks described in our filings with the Securities and Exchange Commission and under the “Risk Factors” section in Part II below.*

*We encourage you to read the risks described under Part II, Item 1A “Risk Factors” carefully. We caution you not to place undue reliance on the forward-looking statements contained in this report. These statements, like all statements in this report, speak only as of the date of this report (unless an earlier date is indicated) and we undertake no obligation to update or revise the statements except as required by law. Such forward-looking statements are not guarantees of future performance and actual results will likely differ, perhaps materially, from those suggested by such forward-looking statements.*

### **Overview**

We are a cell therapy company dedicated primarily to the development of novel treatments for cardiovascular disease and soft tissue injuries and burns. We have a global product development strategy with a focus on the U.S. cardiovascular disease market. In the U.S. our goal is to bring the Cytori cell therapy to market for treatment of heart failure due to ischemic heart disease through Cytori-sponsored clinical development efforts and to develop a treatment for thermal burns combined with radiation injury under a contract from BARDA, a division of the U.S. Department of Health and Human Services.

The Cytori cell therapy is a proprietary formulation of stem and regenerative cells derived from a patient’s own adipose (fat) tissue (ADRCs). Adipose tissue is a rich and accessible source of ADRCs. To access these cells from a patient at the time of a surgical procedure, we have designed and developed a sophisticated tissue processing system, the Celution® System, which automates the complex process of digesting fat tissue, releasing the ADRCs, and concentrating them into an optimized and proprietary formulation in a sterile environment. The system is comprised of a central device and requires single-use, per-procedure consumable cartridges. The business model is based on the sale of the central device and generating recurring revenue from the cartridges that are utilized in each procedure.

While we continue focused development of cardiovascular disease market, we have continued efforts to develop new therapeutic applications for Cytori's cell therapy, and we are currently commercializing the Celution® System under select medical device clearances in Europe, Japan, and other regions. The early sales of systems, consumables and ancillary products contributes margins that partially offset our operating expenses and play an important strategic role in fostering familiarity within the medical community with our technology. These sales have also facilitated the discovery of new applications for Cytori's cell therapy by customers conducting investigator-initiated and funded research.

In February 2013, we received a CE Mark for Intravase®, a reagent intended to be used with Cytori's Celution® System for preparing safe and optimized ADRCs for intravascular delivery into the same patient. As a result of this approval, we currently plan to target select centers in Europe to build patient data, which we believe can be used to further expand these claims and increase Celution® adoption. The approval will also allow independent European investigators to conduct their own vascular studies.

We have also refined our corporate priorities to focus on what we believe represents the greatest near term value to our shareholders with our existing capital resources. As part of this strategy, we have elected to discontinue enrollment of our European heart attack trial, ADVANCE by September 30, 2013. This will provide us with greater flexibility to invest more in areas of higher strategic importance such as in the ATHENA heart failure trial, and in the government funded activities under our BARDA contract.

### **Development Pipeline**

The primary therapeutic areas currently within our development pipeline are cardiovascular disease, specifically heart failure due to ischemic heart disease, and the treatment of thermal burns.

In the U.S., we are conducting our ATHENA trial, a prospective, double blind, placebo-controlled, multi-center trial in up to 45 patients. The trial will measure several endpoints, including peak oxygen consumption (VO<sub>2</sub> max). Additional endpoints include perfusion defect, left ventricle end-systolic and diastolic volume and ejection fraction at six and 12 months. In the third quarter, the FDA approved expanding the ATHENA trial from six trial centers to a total of eight centers. Enrollment is expected to be complete by end of 2013. In addition, we also received approval from the FDA to expand the ATHENA program to include a higher cell dose. We expect the trial, ATHENA II, to begin enrolling in the fourth quarter at up to 10 centers, immediately following the full enrollment of ATHENA.

ADVANCE is our European clinical trial for acute myocardial infarction (heart attack). To date, the trial has enrolled 23 patients. As part of a comprehensive evaluation of our global cardiovascular strategy, resource utilization and development priorities, we have decided to discontinue enrollment in the ADVANCE trial once it has achieved the 2013 target enrollment goal of 25 patients or on September 30, 2013. All evidence to date supports a strong safety profile and the patients enrolled in the trial will continue to be followed according to the protocol. The outcomes will be fully analyzed in conjunction with the existing safety and feasibility data from the APOLLO acute myocardial infarction trial. We will focus our internal and financial resources on the highest clinical development priority, which is the expanded U.S. ATHENA trial.

We have completed two European pilot trials investigating Cytori's cell therapy for cardiovascular disease. We have reported long term, 18-month data from the PRECISE trial for chronic myocardial ischemia, which showed that Cytori cell therapy demonstrated safety and sustained improvement in cardiac functional capacity as measured by VO<sub>2</sub> max. Results from the APOLLO trial for acute heart attack demonstrated safety and sustained improvement in infarct size.

In addition to our cardiovascular disease therapeutic pipeline, Cytori is also developing its cell therapy platform for the treatment of thermal burns combined with radiation injury. In the third quarter of 2012, we were awarded a contract to develop a new countermeasure for thermal burns valued at up to \$106 million with the U.S. Department of Health and Human Service's Biomedical Advanced Research and Development Authority (BARDA). The initial base period includes \$4.7 million over two years and covers preclinical research and continued development of Cytori's Celution® System to improve cell processing. The additional contract options, if fully executed, could cover our clinical development through FDA approval under a device-based PMA regulatory pathway. We are making progress in fulfilling the required milestones of the base contract with the goal of completing the base period in early 2014.

**Results of Operations**Product revenues

Product revenues consisted of revenues primarily from our Celution® and Puregraft® Systems and StemSource® Cell Banks.

The following table summarizes the components for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Product revenues - third party	\$ 1,408,000	\$ 1,947,000	\$ 2,800,000	\$ 3,427,000

We experienced a decrease in product revenue during the three and six months ended June 30, 2013 as compared to the same periods in 2012, due principally to the product mix comprising revenue for each period and anticipated timing associated with larger system related sales.

A significant contributor to Cytori's product revenue historically and throughout 2012 has been sales in Japan. In September 2012 we obtained Class I Device Clearance for Celution® and a number of our other products in Japan which led to increased product revenues in the fourth quarter of 2012. This clearance is expected to facilitate sales growth in Japan and it is anticipated that demand will come mostly from researchers at academic hospitals seeking to perform investigator-initiated and funded studies using Cytori's cell therapy.

*The future:* We expect to continue to generate product revenues from a mix of Celution® and StemSource® System and consumables sales. We will sell the products to a diverse group of customers in Europe, Asia and the U.S., who may apply the products towards reconstructive surgery, soft tissue repair, research, aesthetics, and cell and tissue banking as approved in each country. Additionally, as a result of Class I Device Clearance for Celution® and a number of our other products in Japan, we anticipate to sell these products to researchers at academic hospitals seeking to perform investigator-initiated and funded studies using Cytori's cell therapy. As a result of sale of our Puregraft® product line discussed in the subsequent events note to the consolidated condensed financial statement included elsewhere herein, we do not expect significant revenues from that product line in the foreseeable future.

Cost of product revenues

Cost of product revenues relate primarily to Celution® System products and StemSource® Cell Banks and includes material, manufacturing labor, and overhead costs. The following table summarizes the components of our cost of revenues for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Cost of product revenues	\$ 585,000	\$ 1,013,000	\$ 1,323,000	\$ 1,849,000
Share-based compensation	23,000	19,000	42,000	36,000
Total cost of product revenues	\$ 608,000	\$ 1,032,000	\$ 1,365,000	\$ 1,885,000
Total cost of product revenues as % of product revenues	43.2%	53.0%	48.8%	55.0%

Cost of product revenues as a percentage of product revenues was 43.2% and 48.8% for the three and six months ended June 30, 2013 and 53.0% and 55.0% for the three and six months ended June 30, 2012, respectively. Fluctuation in this percentage is to be expected due to the product mix, distributor and direct sales mix, and allocation of overhead.

*The future.* We expect to continue to see variation in our gross profit margin as the product mix comprising revenues fluctuates.

Development revenues

The following table summarizes the components of our development revenues for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Development (Olympus)	\$ —	\$ 2,413,000	\$ 638,000	\$ 2,413,000
Development (Senko)	—	—	1,179,000	—
Government contract (BARDA)	843,000	—	1,389,000	—
Other	16,000	16,000	19,000	19,000
<b>Total development revenues</b>	<b>\$ 859,000</b>	<b>\$ 2,429,000</b>	<b>\$ 3,225,000</b>	<b>\$ 2,432,000</b>

We recognize deferred revenues, related party, as development revenue when certain performance obligations are met (i.e., using a proportional performance approach). Of the amounts received and deferred, we recognized the remaining development revenue of \$638,000 during the three months ended March 31, 2013 as a result of the United States Court of Appeals upholding the FDA's previous determination that our cell processing devices were not substantially equivalent to the cited predicate devices. The recognition of revenue associated with this event reflects the completion of our efforts expended to use commercially reasonable efforts to obtain device regulatory approvals in the United States as it pertains to the 510(k) pathway. During the quarter ended June 30, 2012, we recognized \$2,413,000 of revenue associated with our arrangements with Olympus as a result of completion of two remaining clinical milestones for the APOLLO and PRECISE clinical trials.

In February 2013, we entered into a mutual termination and release agreement with Senko, whereby the Distribution Agreement and all Senko rights, licenses and privileges granted under the Distribution Agreement terminated and reverted to the Company. As a result of this Termination Agreement, we are obligated to pay Senko \$1,200,000 in six quarterly installment payments of \$200,000 each through May 2014. At the time of the Termination Agreement, we had a balance of \$2,379,000 in deferred revenues on our balance sheet relating to the payments received from Senko in the past pursuant to the Distribution Agreement. At the time of the Termination Agreement, we accrued \$1,200,000 of the termination fee, and recognized the remaining \$1,179,000 in development revenues which reflects the Company's efforts towards commercialization under the agreement.

In the third quarter of 2012, we were awarded a contract to develop a new countermeasure for thermal burns valued at up to \$106 million with U.S. Department of Health and Human Service's Biomedical Advanced Research and Development Authority (BARDA). The initial base period includes \$4.7 million over two years and covers preclinical research and continued development of Cytori's Celution® system to improve cell processing. The additional contract options, if fully executed, could cover clinical development through FDA approval under a device-based PMA regulatory pathway. This is a cost reimbursement contract and related government contract revenue was recorded at the gross amount of reimbursement starting in the fourth quarter of 2012. To receive funds under this arrangement, we are required to (i) demonstrate that we incurred "qualifying expenses," as defined in the contract agreement between BARDA and us, (ii) maintain a system of controls, whereby we can accurately track and report all expenditures related solely to develop a new countermeasure for thermal burns, and (iii) file appropriate forms and follow appropriate protocols established by BARDA. During the three months and six months ended June 30, 2013, we incurred \$784,000 and \$1,292,000 in qualified expenditures. We recognized a total of \$843,000 and \$1,389,000 in revenues for the three and six months ended June 30, 2013, respectively, which included allowable fees as well as cost reimbursements. There were no comparable revenues and expenditures for the three and six months ended June 30, 2012.

*The future:* We expect to continue recognizing government contract revenue relating to our contract with BARDA as we continue our development work relating to this contract.

Research and development expenses

Research and development expenses include costs associated with the design, development, testing and enhancement of our products, regulatory fees, the purchase of laboratory supplies, pre-clinical studies and clinical studies.

The following table summarizes the components of our research and development expenses for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
General research and development	\$ 3,995,000	\$ 3,038,000	\$ 7,572,000	\$ 5,719,000
Share-based compensation	155,000	186,000	297,000	341,000
Total research and development expenses	<u>\$ 4,150,000</u>	<u>\$ 3,224,000</u>	<u>\$ 7,869,000</u>	<u>\$ 6,060,000</u>

Research and development expenses relate to the development of a technology platform that involves using adipose tissue as a source of autologous regenerative cells for therapeutic applications. These expenses, in conjunction with continued development efforts related to our Celution® System, result primarily from the broad expansion of our research and development efforts enabled by the funding we received from Olympus in 2005 and 2006 and from other investors during the last few years.

The increase in research and development expenses for the three and six months ended June 30, 2013 as compared to the same periods in 2012 is due to increases in salary and related benefits expense (excluding share-based compensation) of \$209,000 and \$385,000, an increase in professional services expenses of \$85,000 and \$188,000, increased research supplies expense of \$79,000 and \$226,000, and increased clinical study expense of \$300,000 and \$529,000, respectively, associated with our clinical, BARDA related development work and regulatory activities.

*The future:* We expect research and development expenditures to increase in the remainder of 2013 as we continue enrollment in our US trial ATHENA, limited remaining enrollment in the ADVANCE cardiac trial, continue development work under our BARDA contract, and as we seek additional regulatory clearances and potentially seek to initiate additional trials or patient registries during 2013.

#### Sales and marketing expenses

Sales and marketing expenses include costs of sales and marketing personnel, tradeshow, physician training, and promotional activities and materials. The following table summarizes the components of our sales and marketing expenses for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Sales and marketing	\$ 2,189,000	\$ 2,392,000	\$ 4,285,000	\$ 4,571,000
Share-based compensation	221,000	189,000	382,000	385,000
Total sales and marketing expenses	<u>\$ 2,410,000</u>	<u>\$ 2,581,000</u>	<u>\$ 4,667,000</u>	<u>\$ 4,956,000</u>

The decrease in sales and marketing expense during the three and six months ended June 30, 2013 as compared to the same periods in 2012 was mainly attributed to the decrease in salary and related benefits expense (excluding share-based compensation) of \$157,000 and \$223,000, decrease in travel and entertainment expenses of \$96,000 and \$71,000, offset by an increase in professional services expense of \$129,000 and \$110,000, respectively, as a result of targeted reductions in staff and external costs made in early 2012.

*The future:* We expect sales and marketing expenditures to remain relatively stable in the remainder of 2013.

General and administrative expenses

General and administrative expenses include costs for administrative personnel, legal and other professional expenses, and general corporate expenses. The following table summarizes the general and administrative expenses for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
General and administrative	\$ 3,480,000	\$ 3,146,000	\$ 6,775,000	\$ 6,497,000
Share-based compensation	566,000	642,000	1,117,000	1,215,000
Total general and administrative expenses	<u>\$ 4,046,000</u>	<u>\$ 3,788,000</u>	<u>\$ 7,892,000</u>	<u>\$ 7,712,000</u>

For the three and six months ended June 30, 2013 as compared to the same periods in 2012, general and administrative expenses (excluding share-based compensation) increased primarily due to an increase in professional services expenses of \$232,000 and \$97,000, respectively.

*The future:* We expect general and administrative expenses to remain relatively stable through the remainder of 2013.

Share-based compensation expenses

Stock-based compensation expenses include charges related to options and restricted stock awards issued to employees, directors and non-employees along with charges related to the employee stock purchases under the Employee Stock Purchase Plan (ESPP). We measure stock-based compensation expense based on the grant-date fair value of any awards granted to our employees. Such expense is recognized over the period of time that employees provide service to us and earn all rights to the awards.

The following table summarizes the components of our share-based compensation expenses for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Cost of product revenues	\$ 23,000	\$ 19,000	\$ 42,000	\$ 36,000
Research and development-related	155,000	186,000	297,000	341,000
Sales and marketing-related	221,000	189,000	382,000	385,000
General and administrative-related	566,000	642,000	1,117,000	1,215,000
Total share-based compensation	<u>\$ 965,000</u>	<u>\$ 1,036,000</u>	<u>\$ 1,838,000</u>	<u>\$ 1,977,000</u>

Most of the share-based compensation expenses for the three and six months ended June 30, 2013 and 2012 related to the vesting of stock option and restricted stock awards to employees.

See Notes to the Consolidated Financial Statements included elsewhere herein for disclosure and discussion of share based compensation.

*The future.* We expect to continue to grant options and stock awards (which will result in an expense) to our employees, directors, and, as appropriate, to non-employee service providers. In addition, previously-granted options will continue to vest in accordance with their original terms. As of June 30, 2013 the total compensation cost related to non-vested stock options and stock awards not yet recognized for all our plans is approximately \$6,572,000, which is expected to be recognized as a result of vesting under service conditions over a weighted average period of 1.93 years.

Change in fair value of warrant liability

The following is a table summarizing the change in fair value of our warrant liability for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Change in fair value of warrant liability	\$ (84,000)	\$ 251,000	\$ (418,000)	\$ 381,000

Changes in fair value of our warrant liability are primarily due to fluctuations in the valuation inputs, such as stock price, volatility, remaining life and others.

*The future:* Warrant liability fair value was \$0 as of June 30, 2013 and no future changes in the fair value of the warrant liability are expected to be recognized in earnings as the warrants will expire in August 2013.

Change in fair value of option liability

The following is a table summarizing the change in fair value of our put option liability for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Change in fair value of put option liability	\$ (2,500,000)	\$ 460,000	\$ (2,250,000)	\$ 190,000

Changes in fair value of our put option liability are due to changes in assumptions used in estimating the value of the Put, such as bankruptcy threshold for Cytori, fair value of the Olympus-Cytori, Inc. Joint Venture, volatility and others.

*The future:* The Put was cancelled as a result of the Joint Venture termination and we will not be recognizing any changes in fair value of put option liability in the future.

Loss on asset disposal

The following table summarizes our loss on asset disposal for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Loss on asset disposal	\$ (257,000)	\$ —	\$ (257,000)	\$ —

During the quarter ended June 30, 2013, we identified Celution® One equipment that that was initially purchased from the Joint Venture with the purpose of being used in our clinical studies. This equipment was manufactured using a configuration that can no longer be used in our studies. The related net book value of \$257,000 was recorded as loss on asset disposal.



Financing items

The following table summarizes interest income, interest expense, and other income and expense for the three and six months ended June 30, 2013 and 2012:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Loss on debt extinguishment	\$ (708,000)	\$ —	\$ (708,000)	\$ —
Interest income	1,000	1,000	1,000	2,000
Interest expense	(652,000)	(860,000)	(1,361,000)	(1,726,000)
Other income (expense)	(124,000)	(27,000)	(296,000)	(73,000)
<b>Total</b>	<b>\$ (1,483,000)</b>	<b>\$ (886,000)</b>	<b>\$ (2,364,000)</b>	<b>\$ (1,797,000)</b>

- In connection with the June 28, 2013 Loan and Security Agreement (Loan Agreement), a loss on debt extinguishment was recorded that relates to the payoff of the prior loan obligation. See Notes to Consolidated Condensed Financial Statements for further information.
- Interest expense decreased for the three and six months ended June 30, 2013 as compared to the same periods in 2012 due to principal payments made on the prior loan obligations. In June 2013, we entered into a Loan and Security Agreement, pursuant to which the Lenders funded an aggregate principal amount of \$27.0 million. The proceeds from the June 2013 loan were used to repay the prior loan obligation and related fees.
- The changes in other income (expense) during the three and six months ended June 30, 2013 as compared to the same periods in 2012 resulted primarily from changes in foreign currency exchange rates.

*The future:* Interest income earned in the remainder of 2013 will be dependent on our levels of funds available for investment as well as general economic conditions. We expect interest expense in 2013 to increase as a result of increased loan principal balance of \$27.0 million of the Term Loans that were funded in June 2013.

Gain on previously held equity interest and equity loss from investment in Joint Venture

The following table summarizes our gain on previously held equity interest and equity loss from investment in joint venture for the three and six months ended June 30, 2012 and 2011:

	For the three months ended June 30,		For the six months ended June 30,	
	2013	2012	2013	2012
Gain on previously held equity interest	\$ 4,892,000	\$ —	\$ 4,892,000	\$ —
Equity loss in investment	—	(37,000)	(48,000)	(86,000)
<b>Total</b>	<b>\$ 4,892,000</b>	<b>\$ (37,000)</b>	<b>\$ 4,844,000</b>	<b>\$ (86,000)</b>

Gain on previously held equity interest represents the effect of remeasuring our equity interest in connection with the May 2013 acquisition of the remaining interest in the Olympus-Cytori Joint Venture. See Notes to the Consolidated Condensed Financial Statements included elsewhere herein for disclosure and discussion of our Joint Venture Termination Agreement.

The equity losses relate entirely to our previously existing 50% equity interest in the Joint Venture, which prior to the termination of the Joint Venture, was accounted for using the equity method of accounting.

**Liquidity and Capital Resources**Short-term and long-term liquidity.

The following is a summary of our key liquidity measures at June 30, 2013 and December 31, 2012:

	<u>As of June 30,</u> <u>2013</u>	<u>As of</u> <u>December 31,</u> <u>2012</u>
Cash and cash equivalents	\$ 13,621,000	\$ 25,717,000
Current assets	\$ 21,719,000	\$ 33,979,000
Current liabilities	7,842,000	17,613,000
Working capital	<u>\$ 13,877,000</u>	<u>\$ 16,366,000</u>

We incurred net losses of \$3,211,000 and \$10,877,000 for the three and six months ended June 30, 2013 and \$7,883,000 and \$17,208,000 for the three and six months ended June 30, 2012, respectively. We have an accumulated deficit of \$285,605,000 as of June 30, 2013. Additionally, we have used net cash of \$17,014,000 and \$15,958,000 to fund our operating activities for the six months ended June 30, 2013 and 2012, respectively. To date, these operating losses have been funded primarily from outside sources of invested capital and gross profits. During 2012 and 2013, we expanded our commercialization activities while simultaneously pursuing available financing sources to support operations and growth.

We have had, and we will likely continue to have, an ongoing need to raise additional cash from outside sources to fund our future operations. Subsequent to the quarter ended June 30<sup>th</sup>, 2013, we entered into a Sale and Exclusive License/Supply Agreement with Bimini Technologies LLC (“Bimini”), pursuant to which we sold to Bimini substantially all of the assets (other than certain retained rights and licenses) of our Puregraft® product line, a series of standalone fat transplantation products that were developed to improve the predictability of outcomes for autologous fat grafting and aesthetic body contouring. The aggregate value of the consideration paid by Bimini at the execution of the agreement was \$5.0 million.

We believe we have sufficient cash to fund operations through November 30, 2013, which includes minimum liquidity requirements of the Loan and Security Agreement, which requires us to maintain at least three months of cash on hand. We restructured our debt in June 2013, which resulted in additional proceeds along with extended terms of the loan and deferral of principal payments for twelve months. At November 30, 2013, absent additional funding, our cash balance may be less than the minimum liquidity amount required by the lenders in the Loan and Security Agreement. In order to fund operations and our continued commercialization efforts through the next twelve months, we are pursuing additional funding through either strategic corporate partnerships or future issuances of equity or debt securities in addition to our gross profits. We have an established history of raising capital through all these platforms, and are currently involved in negotiations with multiple parties. In the absence of sufficient positive cash flows from operations, no assurance can be given that we can generate sufficient revenue to cover operating costs or that additional financing will be available to us and, if available, on terms acceptable to us in the future.

Without this additional capital, cash generated from sales and containment of costs will not provide adequate funding indefinitely at their current levels. If we cannot raise sufficient capital, we would need to reduce our research, development, and administrative operations, including reductions of our employee base and the deferral of ongoing development projects, to focus almost entirely on the supply of current products to existing distribution channels and our thermal burn contract arrangement with BARDA. As a result, such reductions would negatively affect our ability to achieve certain other corporate goals.

The following summarizes our contractual obligations and other commitments at June 30, 2013, and the effect such obligations could have on our liquidity and cash flow in future periods:

<u>Contractual Obligations</u>	<u>Payments due by period</u>				
	<u>Total</u>	<u>Less than 1</u> <u>year</u>	<u>1 – 3 years</u>	<u>3 – 5 years</u>	<u>More than</u> <u>5 years</u>
Long-term obligations	\$ 28,682,000	\$ 21,000	\$ 16,373,000	\$ 12,288,000	\$ —
Interest commitment on long-term obligations	6,891,000	2,418,000	3,856,000	617,000	—
Operating lease obligations	8,510,000	2,184,000	3,767,000	2,559,000	—
Minimum purchase requirements	850,000	850,000	—	—	—
License termination fee obligation	800,000	800,000	—	—	—
Joint Venture purchase obligation*	4,690,000	769,000	3,921,000	—	—
Pre-clinical research study obligations	23,000	23,000	—	—	—
Clinical research study obligations	12,000,000	3,650,000	5,800,000	2,550,000	—
<b>Total</b>	<u>\$ 62,446,000</u>	<u>\$ 10,715,000</u>	<u>\$ 33,717,000</u>	<u>\$ 18,014,000</u>	<u>\$ —</u>

\* The Company has various payment options which could result in the acceleration or deferral of the Joint Venture purchase obligation. See Notes to the Consolidated Condensed Financial Statements included elsewhere herein for disclosure and discussion of our acquisition of Olympus' interest in the Joint Venture.

Cash (used in) provided by operating, investing, and financing activities for the six months ended June 30, 2013 and 2012 is summarized as follows:

	<b>For the six months ended June 30,</b>	
	<b>2013</b>	<b>2012</b>
Net cash used in operating activities	\$ (17,014,000)	\$ (15,958,000)
Net cash used in investing activities	(827,000)	(886,000)
Net cash provided by financing activities	5,826,000	5,693,000
Effect of exchange rate changes on cash and cash equivalents	(81,000)	—
Net decrease in cash and cash equivalents	<u>(12,096,000)</u>	<u>(11,151,000)</u>

#### Operating activities

Operational activities, inclusive of research and development, sales and marketing, and general and administrative efforts, offset in part by product sales, generated an operating loss of \$13,100,000 for the six months ended June 30, 2013. The operating cash impact of this loss was \$17,014,000, after adjusting for the recognition of non-cash development revenues of \$1,817,000, non-cash share-based compensation and other adjustments for material non-cash activities, such as depreciation, amortization, change in fair value of option and warrant liabilities, and changes in working capital due to timing of product shipments (accounts receivable) and payment of liabilities.

Operational activities, inclusive of research and development, sales and marketing, and general and administrative efforts, offset in part by product sales, generated an operating loss of \$15,325,000 for the six months ended June 30, 2012. The operating cash impact of this loss was \$15,958,000, after adjusting for the consideration of non-cash share-based compensation and other adjustments for material non-cash activities, such as depreciation, amortization, change in fair value of option and warrant liabilities, and changes in working capital due to timing of product shipments (accounts receivable) and payment of liabilities.

#### Investing activities

Net cash used in investing activities for the six months ended June 30, 2013 resulted from cash outflows for payment of a license termination fee of \$400,000 and for purchases of property and equipment.

Net cash used in investing activities for the six months ended June 30, 2012 resulted from cash outflow for purchases of property and equipment.

#### Financing Activities

The net cash provided by financing activities for the six months ended June 30, 2013 related primarily to a sale of 1,053,000 shares for approximately \$3,001,000 in gross proceeds in connection with the underwriter exercising the option to purchase additional shares relating to our December 2012 public offering partially offset by principal payments of \$22,292,000 primarily relating to our \$25.0 million loan. Additionally, in June 2013, we entered into a Loan and Security Agreement with Lenders pursuant to which the Lenders funded aggregate principal amount of \$27,000,000 offset by \$1,744,000 debt issuance costs and loan fees. Also, during the six months ended June 30, 2013, we paid \$70,000 payment towards our Joint Venture purchase obligation.

The net cash provided by financing activities for the six months ended June 30, 2012 related primarily to a sale of 1,750,000 shares for approximately \$4,946,000 in gross proceeds in connection with our common stock purchase agreement with Seaside entered into on July 11, 2011 and proceeds from exercise of warrants and employee stock options of \$951,000.

#### **Critical Accounting Policies and Significant Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect the reported amounts of our assets, liabilities, revenues and expenses, and that affect our recognition and disclosure of contingent assets and liabilities.

While our estimates are based on assumptions we consider reasonable at the time they were made, our actual results may differ from our estimates, perhaps significantly. If results differ materially from our estimates, we will make adjustments to our financial statements prospectively as we become aware of the necessity for an adjustment.

We believe it is important for you to understand our most critical accounting policies. These are our policies that require us to make our most significant judgments and, as a result, could have the greatest impact on our future financial results. For a summary of significant accounting policies, see Notes to the Consolidated Financial Statements in Part II, Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2012 as well as Notes to Consolidated Condensed Financial Statements included elsewhere herein for disclosure and discussion of policies and significant estimates related to our warrant and put liabilities, revenue recognition, and stock based compensation.

### **Recent Accounting Pronouncements**

See Notes to Consolidated Condensed Financial Statements included elsewhere herein for disclosure and discussion of new accounting standards.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risk related to fluctuations in interest rates and in foreign currency exchange rates.

#### **Interest Rate Exposure**

We are not subject to market risk due to fluctuations in interest rates on our long-term obligations as they bear a fixed rate of interest. Our exposure relates primarily to short-term investments, including funds classified as cash equivalents. As of June 30, 2013, all excess funds were invested in money market funds and other highly liquid investments, therefore our interest rate exposure is not considered to be material.

#### **Foreign Currency Exchange Rate Exposure**

Our exposure to market risk due to fluctuations in foreign currency exchange rates relates primarily to our activities in Europe and Japan. Transaction gains or losses resulting from cash balances and revenues have not been significant in the past and we are not currently engaged in any hedging activity in the Euro, the Yen or other currencies. Based on our cash balances and revenues derived from markets other than the United States for the three months ended June 30, 2013, a hypothetical 10% adverse change in the Euro or Yen against the U.S. dollar would not result in a material foreign currency exchange loss. Consequently, we do not expect that reductions in the value of such sales denominated in foreign currencies resulting from even a sudden or significant fluctuation in foreign exchange rates would have a direct material impact on our financial position, results of operations or cash flows.

Notwithstanding the foregoing, the indirect effect of fluctuations in interest rates and foreign currency exchange rates could have a material adverse effect on our business, financial condition and results of operations. For example, foreign currency exchange rate fluctuations may affect international demand for our products. In addition, interest rate fluctuations may affect our customers' buying patterns. Furthermore, interest rate and currency exchange rate fluctuations may broadly influence the United States and foreign economies resulting in a material adverse effect on our business, financial condition and results of operations.

### **Item 4. Controls and Procedures**

#### *Evaluation of Disclosure Controls and Procedures*

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed or furnished pursuant to the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rule 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report.

## Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting during the quarter ended June 30, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

From time to time, we have been involved in routine litigation incidental to the conduct of our business. As of June 30, 2013, we were not a party to any material legal proceeding. See Notes to the Consolidated Condensed Financial Statements included elsewhere herein for a discussion of our loss contingencies.

### Item 1A. Risk Factors

*In analyzing our company, you should consider carefully the following risk factors together with all of the other information included in this quarterly report on Form 10-Q, including our unaudited Consolidated Condensed Financial Statements and the related notes and “Management’s Discussion and Analysis of Financial Conditions and Results of Operations”. If any of the risks described below occur, our business, operating results, and financial condition could be adversely affected and the value of our common stock could decline.*

*We have marked with an asterisk (\*) those risks described below that reflect new risks or substantive changes from the risks described under Part I, Item 1A “Risk Factors” included in our Annual Report on Form 10-K for the year ended December 31, 2012.*

#### We will need to raise more cash in the future

We have almost always had negative cash flows from operations. Our business will continue to result in a substantial requirement for research and development expenses for several years, during which we may not be able to bring in sufficient cash and/or revenues to offset these expenses. During 2012 and 2013, we expanded our commercialization activities while simultaneously pursuing available financing sources to support operations and growth. We have had, and we will continue to have, an ongoing need to raise additional cash from outside sources to continue funding our operations to profitability. We do not currently believe that our cash balance and the revenues from our operations will be sufficient to fund the development and marketing efforts required to reach profitability without raising additional capital from accessible sources of financing in the future.

In addition, our Loan and Security Agreement with Oxford Finance LLC and Silicon Valley Bank requires us to maintain certain minimum cash requirements, including at least three months of cash on hand, to avoid an event of default thereunder, and if our cash reserves fall below those minimum requirements, then we could be in default under the loan agreement and subject to potential adverse remedies by the lenders, which would have a substantial and material adverse effect on our business, financial condition, results of operations, the value of our common stock and warrants and our ability to raise capital. We believe we have enough cash to fund operations through November 30, 2013, which includes minimum liquidity requirements of the Loan and Security Agreement, that requires us to make accrued interest payments and maintain at least three months of cash on hand to avoid an event of default under the loan agreement. At November 30, 2013, absent additional funding or debt restructuring, our cash balance may be less than the minimum liquidity amount required by the lender in the Loan and Security Agreement. In order to continue operations through the next twelve months, we are pursuing additional cash through strategic corporate partnership and future sales of equity, in addition to our gross profits. While we have an established history of raising capital through these platforms, and we are currently involved in negotiations with multiple parties, there is no guarantee that adequate funds will be available when needed from additional debt or equity financing, development and commercialization partnerships, increased results of operations, or from other sources, or on terms acceptable to us. Our inability to obtain sufficient additional funds in the future would, at a minimum, require us to delay, scale back, or eliminate some or all of our research or product development, manufacturing operations, administrative operations, including our employee base, and clinical or regulatory activities, which could have a substantial negative effect on our results of operations and financial condition.

#### Continued turmoil in the economy could harm our business

Negative trends in the general economy, including trends resulting from an actual or perceived recession, tightening credit markets, increased cost of commodities, including oil, actual or threatened military action by the United States and threats of terrorist attacks in the United States and abroad, could cause a reduction of investment in and available funding for companies in certain industries, including ours and our customers. Our ability to raise capital has been and may in the future be adversely affected by downturns in current credit conditions, financial markets and the global economy.

We have never been profitable on an operational basis and expect significant operating losses for the next few years

We have incurred net operating losses in each year since we started business. As our focus on the Celution® System platform and development of therapeutic applications for its cellular output has increased, losses have resulted primarily from expenses associated with research and development activities and general and administrative expenses. While we work continuously to implement cost reduction measures where possible, we nonetheless expect to continue operating in a loss position on a consolidated basis and that recurring operating expenses will be at high levels for the next several years, in order to perform clinical trials, additional pre-clinical research, product development, and marketing. As a result of our historic losses, we have been, and are likely to continue to be, reliant on raising outside capital to fund our operations.

Our business strategy is high-risk

We are focusing our resources and efforts primarily on development of the Celution® System family of products and the therapeutic applications of its cellular output, which requires extensive cash needs for research, development, and commercialization activities. This is a high-risk strategy because there is no assurance that our future products will ever become commercially viable (commercial risk), that we will prevent other companies from depriving us of market share and profit margins by selling products based on our inventions and developments (legal risk), that we will successfully manage a company in a new area of business (regenerative medicine) and on a different scale than we have operated in the past (operational risk), that we will be able to achieve the desired therapeutic results using stem and regenerative cells (scientific risk), or that our cash resources will be adequate to develop our products until we become profitable, if ever (financial risk). We are using our cash in one of the riskiest industries in the economy (strategic risk). This may make our stock an unsuitable investment for many investors.

The development and manufacture of current and future generation Celution® System devices is important to us

We must continue to develop and manufacture both the current and future generation Celution® System devices. If we are not successful in further development of the current and future generation Celution® System devices, we may not be able to compete successfully in the marketplace (technology risk), and if we experience disruptions and/or delays in our production of these devices as required by the marketplace, our operations and commercialization efforts (clinical, regulatory and/or commercial sales) we would be harmed (manufacturing risk).

Although we have significant experience in manufacturing the current Celution® System platform and its consumables at a commercial level, there can be no guarantee that we will be able to successfully develop and manufacture future generation Celution® Systems in a manner that is cost-effective or commercially viable, or that development and manufacturing capabilities might not take much longer than currently anticipated to be ready for the market.

Although we have been manufacturing the Celution® 800 System and the StemSource® 900-based Cell Bank since 2008, we cannot assure that we will be able to manufacture sufficient numbers of such products to meet future demand, or that we will be able to overcome unforeseen manufacturing difficulties for these sophisticated medical devices.

We have a limited operating history; operating results and stock price can be volatile like many life science companies

Our prospects must be evaluated in light of the risks and difficulties frequently encountered by emerging companies and particularly by such companies in rapidly evolving and technologically advanced biotech and medical device fields. From time to time, we have tried to update our investors' expectations as to our operating results by periodically announcing financial guidance. However, we have in the past been forced to revise or withdraw such guidance due to lack of visibility and predictability of product demand. Our stock price has a history of significant volatility, which may harm our ability to raise additional capital and may cause an investment in Cytora to be unsuitable for some investors.

We are vulnerable to competition and technological change, and also to physicians' inertia

We compete with many domestic and foreign companies in developing our technology and products, including biotechnology, medical device, and pharmaceutical companies. Many current and potential competitors have substantially greater financial, technological, research and development, marketing, and personnel resources. There is no assurance that our competitors will not succeed in developing alternative products that are more effective, easier to use, or more economical than those which we have developed or are in the process of developing, or that would render our products obsolete and non-competitive. In general, we may not be able to prevent others from developing and marketing competitive products similar to ours or which perform similar functions.

Competitors may have greater experience in developing therapies or devices, conducting clinical trials, obtaining regulatory clearances or approvals, manufacturing and commercialization. It is possible that competitors may obtain patent protection, approval, or clearance from the FDA or achieve commercialization earlier than we can, any of which could have a substantial negative effect on our business. Finally, Olympus and our other partners might pursue parallel development of other technologies or products, which may result in a partner developing additional products competitive with ours.

We compete against cell-based therapies derived from alternate sources, such as bone marrow, umbilical cord blood and potentially embryos. Doctors historically are slow to adopt new technologies like ours, regardless of the perceived merits, when older technologies continue to be supported by established providers. Overcoming such inertia often requires very significant marketing expenditures or definitive product performance and/or pricing superiority.

We expect physicians' inertia and skepticism to also be a significant barrier as we attempt to gain market penetration with our future products. We believe we will continue to need to finance lengthy time-consuming clinical studies to provide evidence of the medical benefit of our products and resulting therapies in order to overcome this inertia and skepticism particularly in reconstructive surgery, cell preservation, the cardiovascular area and many other indications.

Many potential applications of our technology are pre-commercialization, which subjects us to development and marketing risks

We are in a relatively early stage of the path to commercialization with many of our products. We believe that our long-term viability and growth will depend in large part on our ability to develop commercial quality cell processing devices and useful procedure-specific consumables, and to establish the safety and efficacy of our therapies through clinical trials and studies. With our Celution® System platform, we are pursuing new approaches for reconstructive surgery, preservation of stem and regenerative cells for potential future use, therapies for cardiovascular disease, soft tissue defects, burns and other conditions. There is no assurance that our development programs will be successfully completed or that required regulatory clearances or approvals will be obtained on a timely basis, if at all.

There is no proven path for commercializing the Celution® System platform in a way to earn a durable profit commensurate with the medical benefit. Although we began to commercialize our reconstructive surgery products in Europe and certain Asian markets, and our cell banking products in Japan, Europe, and certain Asian markets in 2008, additional market opportunities for many of our products and/or services may not materialize for a number of years.

Successful development and market acceptance of our products is subject to developmental risks, including failure of inventive imagination, ineffectiveness, lack of safety, unreliability, failure to receive necessary regulatory clearances or approvals, high commercial cost, preclusion or obsolescence resulting from third parties' proprietary rights or superior or equivalent products, competition from copycat products, and general economic conditions affecting purchasing patterns. There is no assurance that we or our partners will successfully develop and commercialize our products, or that our competitors will not develop competing technologies that are less expensive or superior. Failure to successfully develop and market our products would have a substantial negative effect on our results of operations and financial condition.

Market acceptance of new technology such as ours can be difficult to obtain

New and emerging cell therapy and cell banking technologies, such as those provided by the Celution® System family of products, may have difficulty or encounter significant delays in obtaining market acceptance in some or all countries around the world due to the novelty of our cell therapy and cell banking technologies. Therefore, the market adoption of our cell therapy and cell banking technologies may be slow and lengthy with no assurances that significant market adoption will be successful. The lack of market adoption or reduced or minimal market adoption of our cell therapy and cell banking technologies may have a significant impact on our ability to successfully sell our product(s) into a country or region.

Future clinical trial results may differ significantly from our expectations

While we have proceeded incrementally with our clinical trials in an effort to gauge the risks of proceeding with larger and more expensive trials, we cannot guarantee that we will not experience negative results larger and much more expensive clinical trials than we have conducted to date, such as our ADVANCE acute heart attack trial in Europe, and the ATHENA feasibility trial in heart failure due to ischemic heart disease. Poor results in our clinical trials could result in substantial delays in commercialization, substantial negative effects on the perception of our products, and substantial additional costs. These risks are increased by our reliance on third parties in the performance of many of the clinical trial functions, including the clinical investigators, hospitals, and other third party service providers.

We may not be able to protect our proprietary rights

Our success depends in part on whether we can maintain our existing patents, obtain additional patents, maintain trade secret protection, and operate without infringing on the proprietary rights of third parties.

There can be no assurance that any of our pending patent applications will be approved or that we will develop additional proprietary products that are patentable. There is also no assurance that any patents issued to us will not become the subject of a re-examination, will provide us with competitive advantages, will not be challenged by any third parties, or that the patents of others will not prevent the commercialization of products incorporating our technology. Furthermore, there can be no guarantee that others will not independently develop similar products, duplicate any of our products, or design around our patents.

Our commercial success will also depend, in part, on our ability to avoid infringing on patents issued by others. If we were judicially determined to be infringing on any third-party patent, we could be required to pay damages, alter our products or processes, obtain licenses, or cease certain activities. If we are required in the future to obtain any licenses from third parties for some of our products, there can be no guarantee that we would be able to do so on commercially favorable terms, if at all. U.S. patent applications are not immediately made public, so we might be surprised by the grant to someone else of a patent on a technology we are actively using.

Litigation, which would result in substantial costs to us and diversion of effort on our part, may be necessary to enforce or confirm the ownership of any patents issued or licensed to us, or to determine the scope and validity of third-party proprietary rights. If our competitors claim technology also claimed by us and prepare and file patent applications in the United States, we may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office or a foreign patent office to determine priority of invention, which could result in substantial costs to and diversion of effort, even if the eventual outcome is favorable to us. Any such litigation or interference proceeding, regardless of outcome, could be expensive and time-consuming.

Successful challenges to our patents through oppositions, reexamination proceedings or interference proceedings could result in a loss of patent rights in the relevant jurisdiction. If we are unsuccessful in actions we bring against the patents of other parties and it is determined that we infringe the patents of third-parties, we may be subject to litigation, or otherwise prevented from commercializing potential products in the relevant jurisdiction, or may be required to obtain licenses to those patents or develop or obtain alternative technologies, any of which could harm our business. Furthermore, if such challenges to our patent rights are not resolved in our favor, we could be delayed or prevented from entering into new collaborations or from commercializing certain products, which could adversely affect our business and results of operations.

On September 16, 2011, President Obama signed into law major patent law reform known as the Leahy-Smith America Invents Act (AIA). Among other things the AIA implements a first inventor to file standard for patent approval, changes the legal standards for patentability under section 102 of the statute, and creates a post grant review system. As a result of the added uncertainty of interpretation of the AIA and the uncertainty of patent law in general, we cannot predict with certainty how much protection, if any, will be given to our patents if we attempt to enforce them and they are challenged in court. Changes to the patent law under the AIA also may provoke third parties to assert claims against us or result in our intellectual property being narrowed in scope or declared to be invalid or unenforceable.

Competitors or third parties may infringe our patents. We may be required to file patent infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours is not valid or is unenforceable, or that the third party's technology does not in fact infringe upon our patents. An adverse determination of any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our related pending patent applications at risk of not issuing. Litigation may fail and, even if successful, may result in substantial costs and be a distraction to our management. We may not be able to prevent misappropriation of our proprietary rights, particularly in countries outside the U.S. where patent rights may be more difficult to enforce. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential or sensitive information could be compromised by disclosure in the event of litigation. In addition, during the course of litigation there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock.

In addition to patents, which alone may not be able to protect the fundamentals of our business, we also rely on unpatented trade secrets and proprietary technological expertise. Some of our intended future cell-related therapeutic products may fit into this category. We rely, in part, on confidentiality agreements with our partners, employees, advisors, vendors, and consultants to protect our trade secrets and proprietary technological expertise. There can be no guarantee that these agreements will not be breached, or that we will have adequate remedies for any breach, or that our unpatented trade secrets and proprietary technological expertise will not otherwise become known or be independently discovered by competitors.

Failure to obtain or maintain patent protection, or protect trade secrets, for any reason (or third-party claims against our patents, trade secrets, or proprietary rights, or our involvement in disputes over our patents, trade secrets, or proprietary rights, including involvement in litigation), could have a substantial negative effect on our results of operations and financial condition.

#### We may not be able to protect our intellectual property in countries outside the United States

Intellectual property law outside the United States is uncertain and in many countries is currently undergoing review and revisions. The laws of some countries do not protect our patent and other intellectual property rights to the same extent as United States laws. This is particularly relevant to us as most of our current commercial product sales and clinical trials are outside of the United States. Third parties may attempt to oppose the issuance of patents to us in foreign countries by initiating opposition proceedings. Opposition proceedings against any of our patent filings in a foreign country could have an adverse effect on our corresponding patents that are issued or pending in the United States. It may be necessary or useful for us to participate in proceedings to determine the validity of our patents or our competitors' patents that have been issued in countries other than the U.S. This could result in substantial costs, divert our efforts and attention from other aspects of our business, and could have a material adverse effect on our results of operations and financial condition. We currently have pending patent applications in Europe, Australia, Japan, Canada, China, Korea, and Singapore, among others.



We and our medical devices are subject to FDA regulation

As medical devices, the Celution® System family of products, and components of the Stemsources® cell banks, must receive regulatory clearances or approvals from the FDA and, in many instances, from non-U.S. and state governments prior to their sale. The Celution® System family of products is subject to stringent government regulation in the United States by the FDA under the Federal Food, Drug and Cosmetic Act. The FDA regulates the design/development process, clinical testing, manufacture, safety, labeling, sale, distribution, and promotion of medical devices and drugs. Included among these regulations are pre-market clearance and pre-market approval requirements, design control requirements, and the Quality System Regulations/Good Manufacturing Practices. Other statutory and regulatory requirements govern, among other things, establishment registration and inspection, medical device listing, prohibitions against misbranding and adulteration, labeling and post-market reporting.

The regulatory process can be lengthy, expensive, and uncertain. Before any new medical device may be introduced to the U.S. market, the manufacturer generally must obtain FDA clearance or approval through either the 510(k) pre-market notification process or the lengthier pre-market approval application, or PMA, process. It generally takes from three to 12 months from submission to obtain 510(k) pre-market clearance, although it may take longer. Approval of a PMA could take four or more years from the time the process is initiated. The 510(k) and PMA processes can be expensive, uncertain, and lengthy, and there is no guarantee of ultimate clearance or approval. Our Celution® products under development today and in the foreseeable future will be subject to the lengthier PMA process. Securing FDA clearances and approvals may require the submission of extensive clinical data and supporting information to the FDA, and there can be no guarantee of ultimate clearance or approval. Failure to comply with applicable requirements can result in application integrity proceedings, fines, recalls or seizures of products, injunctions, civil penalties, total or partial suspensions of production, withdrawals of existing product approvals or clearances, refusals to approve or clear new applications or notifications, and criminal prosecution.

Medical devices are also subject to post-market reporting requirements for deaths or serious injuries when the device may have caused or contributed to the death or serious injury, and for certain device malfunctions that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. If safety or effectiveness problems occur after the product reaches the market, the FDA may take steps to prevent or limit further marketing of the product. Additionally, the FDA actively enforces regulations prohibiting marketing and promotion of devices for indications or uses that have not been cleared or approved by the FDA.

There can be no guarantee that we will be able to obtain the necessary 510(k) clearances or PMA approvals to market and manufacture our other products in the United States for their intended use on a timely basis, if at all. Delays in receipt of or failure to receive such clearances or approvals, the loss of previously received clearances or approvals, or failure to comply with existing or future regulatory requirements could have a substantial negative effect on our results of operations and financial condition.

To sell in international markets, we will be subject to regulation in foreign countries

In cooperation with our distribution partners, we intend to market our current and future products both domestically and in many foreign markets. A number of risks are inherent in international transactions. In order for us to market our products in Europe, Canada, Japan and certain other non-U.S. jurisdictions, we need to obtain and maintain required regulatory approvals or clearances and must comply with extensive regulations regarding safety, manufacturing processes and quality. These regulations, including the requirements for approvals or clearances to market, may differ from the FDA regulatory scheme. International sales also may be limited or disrupted by political instability, price controls, trade restrictions and changes in tariffs. Additionally, fluctuations in currency exchange rates may adversely affect demand for our products by increasing the price of our products in the currency of the countries in which the products are sold.

There can be no assurance that we will obtain regulatory approvals or clearances in all of the countries where we intend to market our products, or that we will not incur significant costs in obtaining or maintaining foreign regulatory approvals or clearances, or that we will be able to successfully commercialize current or future products in various foreign markets. Delays in receipt of approvals or clearances to market our products in foreign countries, failure to receive such approvals or clearances or the future loss of previously received approvals or clearances could have a substantial negative effect on our results of operations and financial condition.

Changing, new and/or emerging government regulations may adversely affect us

Government regulations can change without notice. Given the fact that Cytori operates in various international markets, our access to such markets could change with little to no warning due to a change in government regulations that suddenly up-regulate our product(s) and create greater regulatory burden for our cell therapy and cell banking technology products.

Due to the fact that there are new and emerging cell therapy and cell banking regulations that have recently been drafted and/or implemented in various countries around the world, the application and subsequent implementation of these new and emerging regulations have little to no precedence. Therefore, the level of complexity and stringency is not known and may vary from country to country, creating greater uncertainty for the international regulatory process.

Anticipated or unanticipated changes in the way or manner in which the FDA regulates products or classes/groups of products can delay, further burden, or alleviate regulatory pathways that were once available to other products. There are no guarantees that such changes in FDA's approach to the regulatory process will not deleteriously affect some or all of our products or product applications.

We may have difficulty obtaining health insurance reimbursement for our products

New and emerging cell therapy and cell banking technologies, such as those provided by the Celution® System family of products, may have difficulty or encounter significant delays in obtaining health care reimbursement in some or all countries around the world due to the novelty of our cell therapy and cell banking technology and subsequent lack of existing reimbursement schemes/pathways. Therefore, the creation of new reimbursement pathways may be complex and lengthy with no assurances that such reimbursements will be successful. The lack of health insurance reimbursement or reduced or minimal reimbursement pricing may have a significant impact on our ability to successfully sell our cell therapy and cell banking technology product(s) into a county or region, which would negatively impact our operating results.

Our concentration of sales in Japan may have negative effects on our business in the event of any crisis in that region

We have operations in a number of regions around the world, including the United States, Japan, and Europe. Our global operations may be subject to risks that may limit our ability to operate our business. We sell our products globally, which exposes us to a number of risks that can arise from international trade transactions, local business practices and cultural considerations, including:

- political unrest, terrorism and economic or financial instability;
- unexpected changes and uncertainty in regulatory requirements and systems related
- nationalization programs that may be implemented by foreign governments;
- import-export regulations;
- difficulties in enforcing agreements and collecting receivables;
- difficulties in ensuring compliance with the laws and regulations of multiple jurisdictions;
- changes in labor practices, including wage inflation, labor unrest and unionization policies;
- longer payment cycles by international customers;
- currency exchange fluctuations;
- disruptions of service from utilities or telecommunications providers, including electricity shortages;
- difficulties in staffing foreign branches and subsidiaries and in managing an expatriate workforce, and differing employment practices and labor issues;
- potentially adverse tax consequences;

We also face risks associated with currency exchange and convertibility, inflation and repatriation of earnings as a result of our foreign operations. We are also vulnerable to appreciation or depreciation of foreign currencies against the U.S. dollar. Although we have significant operations in Asia, a substantial portion of transactions are denominated in U.S. dollars. As appreciation against the U.S. dollar increases, it will result in an increase in the cost of our business expenses abroad. Conversely, downward fluctuations in the value of foreign currencies relative to the U.S. dollar may make our products less price competitive than local solutions. From time to time, we may engage in currency hedging activities, but such activities may not be able to limit the risks of currency fluctuations.

Our revenue, results of operations, and cash flows may suffer upon the loss of a significant customer or a significant reduction in the amount of product ordered by any such customer.

Our largest customer in Japan accounted for 12% of our revenue during the year ended December 31, 2012. Loss of this significant customer or a significant reduction in the amount of product ordered by this customer would adversely affect our revenue, results of operations, and cash flows.

We must maintain quality assurance certification and manufacturing approvals

The manufacture of our products is, and the manufacture of any future cell-related therapeutic products would be, subject to periodic inspection by regulatory authorities and distribution partners. The manufacture of devices and products for human use is subject to regulation and inspection from time to time by the FDA for compliance with the FDA's Quality System Regulation, or QSR, requirements, as well as equivalent requirements and inspections by state and non-U.S. regulatory authorities. There can be no guarantee that the FDA or other authorities will not, during the course of an inspection of existing or new facilities, identify what they consider to be deficiencies in our compliance with QSRS or other requirements and request, or seek remedial action.

Failure to comply with such regulations or a potential delay in attaining compliance may adversely affect our manufacturing activities and could result in, among other things, injunctions, civil penalties, FDA refusal to grant pre-market approvals or clearances of future or pending product submissions, fines, recalls or seizures of products, total or partial suspensions of production, and criminal prosecution. There can be no assurance after such occurrences that we will be able to obtain additional necessary regulatory approvals or clearances on a timely basis, if at all. Delays in receipt of or failure to receive such approvals or clearances, or the loss of previously received approvals or clearances could have a substantial negative effect on our results of operations and financial condition.

The termination or suspension of the BARDA contract could delay and/or adversely affect our business and our ability to further develop our Celution® System

Cytori was awarded the contract with BARDA in September 2012 with the aim to develop a new countermeasure for a combined injury involving thermal burn and radiation exposure which would be useful following a mass-casualty event. The cost-plus-fixed-fee contract is valued at up to \$106 million, with a guaranteed base period of approximately \$4.7 million which includes preclinical research and the acceleration of Cytori's ongoing development of Cytori's ongoing development of the Celution® cell processing System (the Celution® System). Upon satisfactory proof of concept, BARDA may elect to exercise up to three contract options which will extend the contract term to up to five years if all options are exercised. BARDA may suspend or terminate this contract should we fail to achieve key objectives or milestones, or fail to comply with the operating procedures and processes approved by BARDA and its audit agency, the Defense Contract Audit Agency. There can be no assurance that we will be able to achieve these milestones or continue to comply with these procedures and protocols, or whether we will be able to successfully develop our Celution® System under the contract. If the BARDA contract were terminated or suspended, our business could be adversely affected.

The BARDA contract has certain contracting requirements that allow the U.S. Government to unilaterally control its contracts. If the U.S. Government suspends, cancels, or otherwise terminates our contract with them, we could experience significant revenue shortfalls, and our financial condition and business may be adversely affected

Contracts with U.S. Government agencies typically contain termination provisions unfavorable to the other party, and are subject to audit and modification by the U.S. government at its sole discretion, which will subject us to additional risks. These risks include the ability of the U.S. Government to unilaterally:

- audit or object to our contract-related costs and fees, and require us to reimburse all such costs and fees;
- suspend or prevent us for a set period of time from receiving new contracts or extending our existing contracts based on violations or suspected violations of laws or regulations;
- cancel, terminate or suspend our contracts based on violations or suspected violations of laws or regulations;
- terminate our contracts if in the Government's best interest, including if funds become unavailable to the applicable governmental agency;
- reduce the scope and value of our contracts; and
- change certain terms and conditions in our contracts.

BARDA is able to terminate its contracts with us, either for its best interests or if we default by failing to perform in accordance with or to achieve the milestones set forth in the contract schedules and terms. Termination-for-convenience provisions generally enable us to recover only our costs incurred or committed and settlement expenses on the work completed prior to termination. Changes to, or an unexpected termination of this contract could result in significant revenue shortfalls. If revenue shortfalls occur and are not offset by corresponding reductions in expenses, our business could be adversely affected. We cannot anticipate if, when or to what extent BARDA might revise, alter or terminate its contract with us in the future.

**Under our contract with BARDA, our operations, and those of our contractors, are subject to audit by the U.S. Government, a negative outcome to which could adversely affect our financial conditions and business operations**

U.S. government agencies, such as the Department of Health and Human Services, or DHHS, and the Defense Contract Audit Agency, or the DCAA, routinely audit and investigate government contractors and recipients of federal grants. These agencies evaluate a contractor's performance under its contracts, cost structure and compliance with applicable laws, regulations and standards.

The DHHS and the DCAA also review the adequacy of, and a contractor's compliance with, its internal control systems and policies, including the contractor's purchasing, property, estimating, compensation and management information systems. Any costs found to be improperly allocated to a contract will not be reimbursed, while such costs already reimbursed must generally be repaid. If an audit identifies improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including, but not limited to:

- termination of contracts;
- forfeiture of profits;
- suspension of payments;
- fines; and
- suspension or prohibition from conducting business with the United States government.

**We depend on a few key officers**

Our performance is substantially dependent on the performance of our executive officers and other key scientific and sales staff, including Christopher J. Calhoun, our Chief Executive Officer, and Marc Hedrick, MD, our President. We rely upon them for strategic business decisions and guidance. We believe that our future success in developing marketable products and achieving a competitive position will depend in large part upon whether we can attract and retain additional qualified management and scientific personnel. Competition for such personnel is intense, and there can be no assurance that we will be able to continue to attract and retain such personnel. The loss of the services of one or more of our executive officers or key scientific staff, or the inability to attract and retain additional personnel and develop expertise as needed could have a substantial negative effect on our results of operations and financial condition.

**We may not have enough product liability insurance**

The testing, manufacturing, marketing, and sale of our regenerative cell products involve an inherent risk that product liability claims will be asserted against us, our distribution partners, or licensees. There can be no guarantee that our clinical trial and commercial product liability insurance is adequate or will continue to be available in sufficient amounts or at an acceptable cost, if at all. A product liability claim, product recall, or other claim, as well as any claims for uninsured liabilities or in excess of insured liabilities, could have a substantial negative effect on our results of operations and financial condition. Also, well-publicized claims could cause our stock to fall sharply, even before the merits of the claims are decided by a court.

**Risks Related to Ownership of our Common Stock**

**The market price of our common stock may be volatile and fluctuate significantly, which could result in substantial losses for stockholders and subject us to litigation.**

The market price of our common stock may be subject to significant fluctuations. Among the factors that may cause the market price of our common stock to fluctuate are the risks described in this "Risk Factors" section and other factors, including:

- fluctuations in our operating results or the operating results of our competitors;
- changes in estimates of our financial results or recommendations by securities analysts;
- variance in our financial performance from the expectations of securities analysts;
- changes in the estimates of the future size and growth rate of our markets;
- changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results;

- conditions and trends in the markets we serve;
- changes in general economic, industry and market conditions;
- success of competitive products and services;
- changes in market valuations or earnings of our competitors;
- announcements of significant new products, contracts, acquisitions or strategic alliances by us or our competitors;
- the timing and outcome of regulatory reviews and approvals of our products;
- the commencement or outcome of litigation involving our company, our general industry or both;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- actual or expected sales of our common stock by the holders of our common stock; and
- the trading volume of our common stock.

In addition, the stock market in general, the NASDAQ Global Market and the market for cell therapy development companies in particular may experience a loss of investor confidence. A loss of investor confidence may result in extreme price and volume fluctuations in our common stock that are unrelated or disproportionate to the operating performance of our business, our financial condition or results of operations. These broad market and industry factors may materially harm the market price of our common stock and expose us to securities class-action litigation. Class-action litigation, even if unsuccessful, could be costly to defend and divert management's attention and resources, which could further materially harm our financial condition and results of operations.

Future sales of our common stock may depress our share price.

As of June 30, 2013, we had 67,235,591 shares of our common stock outstanding. Sales of a number of shares of common stock in the public market, or the expectation of such sales, could cause the market price of our common stock to decline. In addition, our 2004 Equity Incentive Plan provides for annual increases in the number of shares available for issuance under the plan, which may, among other things, result in dilution of the price of our common stock. We may also sell additional common stock in subsequent public offerings, which may adversely affect the market price of our common stock.

We have granted demand registration rights for the registration of the resale of certain shares of our common stock to each of Olympus Corporation, Astellas Pharma Inc. and Green Hospital Supply, Inc. pursuant to common stock purchase agreements previously entered into with each of these stockholders. An aggregate of 5,528,571 shares of our common stock are subject to these demand registration rights. If we receive a written request from any of these stockholders to file a registration statement under the Securities Act covering its shares of unregistered common stock, we are required to use reasonable efforts to prepare and file with the SEC within 30 business days of such request a registration statement covering the resale of the shares for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act.

Our charter documents contain anti-takeover provisions

Certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws could discourage, delay or prevent a merger, acquisition or other change of control that stockholders may consider favorable. These provisions could also prevent or frustrate attempts by our stockholders to replace or remove members of our Board of Directors. Stockholders who wish to participate in these transactions may not have the opportunity to do so. These provisions:

- authorize our Board of Directors to issue without stockholder approval up to 5,000,000 shares of preferred stock, the rights of which will be determined at the discretion of the Board of Directors;
- require that stockholder actions must be effected at a duly called stockholder meeting and cannot be taken by written consent;

- establish advance notice requirements for stockholder nominations to our Board of Directors or for stockholder proposals that can be acted on at stockholder meetings; and
- limit who may call stockholder meetings.

We are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may, unless certain criteria are met, prohibit large stockholders, in particular those owning 15% or more of the voting rights on our common stock, from merging or combining with us for a prescribed period of time.

We pay no dividends.

We have never paid cash dividends in the past, and currently do not intend to pay any cash dividends in the foreseeable future. This could make an investment in our company inappropriate for some investors, and may serve to narrow our potential sources of additional capital.

If securities and/or industry analysts fail to continue publishing research about our business, if they change their recommendations adversely or if our results of operations do not meet their expectations, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. In addition, it is likely that in some future period our operating results will be below the expectations of securities analysts or investors. If one or more of the analysts who cover us downgrade our stock, or if our results of operations do not meet their expectations, our stock price could decline.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None

**Item 3. Defaults Upon Senior Securities**

None

**Item 4. Mine Safety Disclosures**

None

**Item 5. Other Information**

None

**Item 6. Exhibits**

Exhibit No. Description

<a href="#">10.92</a>	Loan and Security Agreement, dated June 28, 2013, by and among the Company, Oxford Finance LLC and Silicon Valley Bank. (filed herewith).
<a href="#">4.17</a>	Warrant to Purchase Common Stock issued by the Company on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013. (filed herewith).
<a href="#">4.18</a>	Warrant to Purchase Common Stock issued by the Company on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013. (filed herewith).
<a href="#">4.19</a>	Warrant to Purchase Common Stock issued by the Company on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013. (filed herewith).
<a href="#">4.20</a>	Warrant to Purchase Common Stock issued by the Company on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013. (filed herewith).
<a href="#">4.21</a>	Warrant to Purchase Common Stock issued by the Company on June 28, 2013 in favor of Silicon Valley Bank pursuant to the Loan and Security Agreement dated June 28, 2013. (filed herewith).
<a href="#">31.1</a>	Certification of Principal Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
<a href="#">31.2</a>	Certification of Principal Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
<a href="#">32.1*</a>	Certifications Pursuant to 18 U.S.C. Section 1350/ Securities Exchange Act Rule 13a-14(b), as adopted pursuant to Section 906 of the Sarbanes - Oxley Act of 2002 (filed herewith).
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

\* These certifications are being furnished solely to accompany this report pursuant to 18 U.S.C. 1350 and are not being filed for purposes of Section 18 of the Securities and Exchange Act of 1934 and are not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**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 thereunto duly authorized.

**CYTORI THERAPEUTICS, INC.**

Dated: August 9, 2013

By: /s/ Christopher J. Calhoun  
Christopher J. Calhoun  
*Chief Executive Officer*

Dated: August 9, 2013

By: /s/ Mark E. Saad  
Mark E. Saad  
*Chief Financial Officer*



**LOAN AND SECURITY AGREEMENT**

**THIS LOAN AND SECURITY AGREEMENT** (as the same may from time to time be amended, modified, supplemented or restated, this "**Agreement**") dated as of June 28, 2013 (the "**Effective Date**") among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 ("**Bank**" or "**SVB**") (each a "**Lender**" and collectively, the "**Lenders**"), and CYTORI THERAPEUTICS, INC., a Delaware corporation with offices located at 3020 Callan Road, San Diego, CA 92121 ("**Borrower**"), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

**1. ACCOUNTING AND OTHER TERMS**

**1.1** Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "**Dollars**" or "**\$**" are United States Dollars, unless otherwise noted.

**2. LOANS AND TERMS OF PAYMENT**

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loan advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

**2.2 Term Loan.**

(a) **Availability.** Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount of Twenty-Seven Million Dollars (\$27,000,000) according to each Lender's Term Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly and collectively as "**Term Loan**"). After repayment, no Term Loan may be re-borrowed.

(b) **Repayment.** Borrower shall make monthly payments of interest only, in arrears, commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of the Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of the Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of the Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty-six (36) months, or if the Revenue Event occurs (and evidence of its occurrence reasonably satisfactory to the Collateral Agent is provided to the Collateral Agent no later than July 25, 2014), then the repayment schedule shall equal thirty (30) months. All unpaid principal and accrued and unpaid interest with respect to the Term Loan is due and payable in full on the Maturity Date. The Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loan is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loan plus accrued and unpaid interest thereon through the prepayment date, (ii) (except to the extent that the sole basis for such acceleration is the occurrence of an Event of Default under Section 8.3 based on a Material Adverse Change) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loan in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan.

(d) Permitted Prepayment of Term Loan. Borrower shall have the option to prepay all, but not less than all, of the Term Loan advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loan at least fifteen (15) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loan plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

### 2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loan shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents if and to the extent that Borrower fails to pay such amounts when due; provided, however, the Collateral Agent and the Lenders must first satisfy the amount such unpaid principal and interest payments from the Designated Deposit Account and may only debit (or ACH) any other account only if, and to the extent, the amount of such unpaid principal and interest payments is not satisfied from the Designated Deposit Account. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**2.4 Secured Promissory Notes.** The Term Loan shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a “**Secured Promissory Note**”), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender’s Secured Promissory Note, an appropriate notation on such Lender’s Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender’s Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender absent manifest error, but the failure to record, or any error in so recording, any such amount on such Lender’s Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

**2.5 Fees.** Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non-refundable facility fee of Two Hundred Thousand Dollars (\$200,000) to be shared between the Lenders pursuant to their respective Commitment Percentages which has already been paid by the Borrower on or about May 30, 2013;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(d) Lenders’ Expenses. All Lenders’ Expenses (including reasonable attorneys’ fees and expenses of Collateral Agent for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

**2.6 Withholding.** Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement. Any Lender claiming any additional amounts payable pursuant to this Section 2.6, or for whom Borrower is required to increase the amount of any payment pursuant to this Section 2.6, shall use its reasonable efforts (consistent with its internal policies and requirements of law) to change the jurisdiction of its lending office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender. Each Lender organized under the laws of a jurisdiction outside the United States as to which payments to be made under this Agreement or under the Notes are exempt from United States withholding tax under an applicable statute or tax treaty shall provide to Borrower and Agent a properly completed and executed IRS Form W 8ECI or Form W 8BEN or other applicable form, certificate or document prescribed by the IRS or the United States.

### 3. CONDITIONS OF LOANS

**3.1 Conditions Precedent to Credit Extension.** Each Lender's obligation to make the Term Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

- (a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;
- (b) subject to the terms of the Post Closing Letter, duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries other than Foreign Subsidiaries, to the extent required under Section 6.6;
- (c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term Loan Commitment Percentage;
- (d) subject to the terms of the Post Closing Letter, the certificates for the Shares, if any, together with assignments separate from such certificates, duly executed in blank;
- (e) the Operating Documents and good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
- (f) a completed Perfection Certificate for Borrower;
- (g) the Annual Projections, for the current calendar year;
- (h) duly executed original officer's certificate for Borrower and each Subsidiary that is a Guarantor party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;
- (i) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (j) subject to the terms of the Post Closing Letter, a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations other than for Permitted Locations (as defined herein below);
- (k) subject to the terms of the Post Closing Letter, a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Subsidiary maintains Collateral having a book value in excess of One Hundred Thousand Dollars (\$100,000.00) other than for Permitted Locations;
- (l) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;
- (m) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;
- (n) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;

(o) payment of the Lenders' Expenses then due as specified in Section 2.5 hereof.

(p) receipt by (i) the Lenders of an executed Disbursement Letter in the form of Exhibit B-1 attached hereto; and (ii) SVB of an executed Loan Payment/Advance Request Form in the form of Exhibit B-2 attached hereto;

(q) receipt by Collateral Agent of an executed copy of the JV Termination Agreement;

(r) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter (and the Loan Payment/Advance Request Form) and on the Funding Date of the Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. The Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(s) in such Lender's discretion, there has not been any Material Adverse Change.

### 3.2 Intentionally Left Blank.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter (and the Loan Payment/Advance Request Form, with respect to SVB) executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

## 4. CREATION OF SECURITY INTEREST

**4.1 Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien. For the sake of clarity, (i) Liens described in clauses (a), (c)-(h), and (l)-(p) of the definition of Permitted Liens are permitted to have priority to the Collateral Agent's Lien, and (ii) Collateral Agent's Lien shall be subject to the licenses described in clauses (j) and (k) of the definition of Permitted Liens. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) arising under this Agreement and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

**4.3 Pledge of Collateral.** Borrower hereby pledges, assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares, together with all proceeds and substitutions thereof (to the extent such proceeds or substitutions, if in the form of stock or other equity interests, constitute Shares), all cash, stock (to the extent such stock constitutes Shares) and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing (to the extent such proceeds, if in the form of stock or other equity interests, constitute Shares), as security for the performance of the Obligations. On the Effective Date, or, to the extent not certificated as of the Effective Date, within twenty (20) days of the certification of any Shares, the certificate or certificates for the Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (the "**Perfection Certificate**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on the Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete in all material respects (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any material applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any Material Agreement. As used herein, "Material Agreement" means any agreement or contract required to be filed by Borrower with the Securities and Exchange Commission ("SEC") pursuant to Item 601(b)(10) of Regulation S-K (other than (x) employment or compensation related agreements, including agreements relating to stock option grants to employees, consultants and directors, and (y) agreements that have been filed with the SEC but that have been assigned or terminated or as to which Borrower has no continuing obligations and is owed no further consideration or performance by the other parties thereto, in each case, prior to the date of this Agreement). Neither Borrower nor any of its Subsidiaries is in default under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

### 5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and, to the extent required under Section 6.6 hereof, taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, except for Permitted Locations and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars (\$100,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.11.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects, or for which Borrower maintains adequate reserves in accordance with GAAP and consistent with Borrower's past practices.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. (i) To Borrower's knowledge, each of Borrower's and its Subsidiaries' Patents (other than patent applications) is valid and enforceable, any and all patent applications constituting such Patents have been filed in good faith, and no part of Borrower's or its Subsidiaries' Intellectual Property which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part, and (ii) to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property or any practice by Borrower or its Subsidiaries violates the rights of any third party except to the extent such claim could not reasonably be expected to have a Material Adverse Change. Except as noted on the Perfection Certificate, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any Material Agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in a Loan Party's interest in such Material Agreement or any other property, or (ii) for which a default under or termination of could interfere in any material respect with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within fifteen (15) days of Borrower or any of other Loan Party entering into or becoming bound by any such Material Agreement with respect to which Borrower or any such Loan Party is the licensee (other than licenses of over-the-counter software or other licenses that are generally commercially available to the public).

**5.3 Litigation.** Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries the outcome of which could reasonably be expected to have a Material Adverse Change.

**5.4 No Material Deterioration in Financial Condition; Financial Statements.** All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end adjustments), in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries as of the dates and for the periods specified therein. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

**5.5 Solvency.** Borrower and each of its Subsidiaries is Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.



None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries has timely filed all required federal (and all material state and local tax returns and reports (or timely extensions therefor), and Borrower and each of its Subsidiaries, has timely paid all federal and all material foreign, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "**Permitted Lien.**" Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiaries', prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term Loan shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date.

**5.10 Shares.** Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**5.11 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements, in light of the circumstances under which they were made, not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.12 Definition of “Knowledge.”** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

## **6. AFFIRMATIVE COVENANTS**

Borrower shall, and, other than Section 6.2 below shall cause each of its Subsidiaries to, do all of the following:

### **6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change; provided however, nothing herein shall prohibit or restrict the wind-down, dissolve and terminate of the existence of Olympus-Cytori and Cytori Italia, S.R.L. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

### **6.2 Financial Statements, Reports, Certificates.**

(a) Borrower shall deliver to each Lender:

(i) as soon as available, but no later than forty-five (45) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower’s fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) as soon as available after approval thereof by Borrower’s Board of Directors, but no later than forty-five (45) days after the last day of each of Borrower’s fiscal years, Borrower’s annual financial projections for the entire current fiscal year as approved by Borrower’s Board of Directors, which such annual financial projections shall be set forth in a quarter-by-quarter format (such annual financial projections as originally delivered to Collateral Agent and the Lenders are referred to herein as the “**Annual Projections**”; provided that, any revisions of the Annual Projections approved by Borrower’s Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) Business Days after such approval);

(iv) within five (5) Business Days of delivery, copies of all statements, reports and notices made available generally by Borrower to Borrower's security holders or holders of Subordinated Debt;

(v) in the event that Borrower becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) Business Days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of any material amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries, together with any copies reflecting such amendments or changes with respect thereto;

(vii) prompt notice of (A) any material change in the composition of the Intellectual Property, (B) the registration in the United States of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries in or to any copyright, patent or trademark, including a copy of any such registration, and (C) any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each month, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects, or for which Borrower maintains adequate reserves in accordance with GAAP consistent with Borrower's past practices. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices substantially as they exist at the Effective Date. Borrower must promptly notify Collateral Agent of all returns, recoveries, disputes and claims that involve more than One Million Dollars (\$1,000,000.00) individually or in the aggregate in any calendar year.

**6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required federal (and all material state and local tax returns and reports (or timely extensions therefor) and timely pay, and require each of its Subsidiaries to timely file, all federal and all material foreign, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to any loss, but not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest (to the extent it held a first priority security interest in the property subject to the casualty loss), and (b) after the occurrence and during the continuance of an Event of Default, subject to the rights of any third party holding a Permitted Lien in such Collateral that is senior to the Lien of Collateral Agent as permitted hereunder, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

#### **6.6 Operating Accounts.**

(a) So long as SVB is a Lender under this Agreement, maintain all of Borrower's and its Subsidiaries' (other than its Foreign Subsidiaries') primary Collateral Accounts with SVB (representing at least 85% of the cash and Cash Equivalents of Borrower and its Subsidiaries required to be maintained to comply with the covenant) in accounts which are subject to a Control Agreement in favor of Collateral Agent; provided that Borrower and its Subsidiaries may also maintain accounts with Wells Fargo Bank, N.A. that are subject to Control Agreement(s) in favor of Collateral Agent.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries (other than its Foreign Subsidiaries') establishes any Collateral Account at or with any Person other than Wells Fargo Bank, N.A. and Silicon Valley Bank). In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary (other than a Foreign Subsidiary) shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The account control agreements shall not be required for: (a) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates, (b) such dedicated deposit accounts, and such deposit accounts pledged to support the SVB Certificate of Deposit and the Wells Fargo Certificate of Deposit. In addition, notwithstanding the foregoing, Borrower and its Subsidiaries shall be permitted to maintain the Deposit Accounts, Securities Accounts and other accounts identified in the Perfection Certificate, so long as the value of the assets credited to or on deposit in such accounts does not exceed the "maximum amounts" set forth on the Perfection Certificate as of the Effective Date for such accounts.

(c) Neither Borrower nor any of its Subsidiaries (other than Foreign Subsidiaries) shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

**6.7 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall use commercially reasonable efforts to: (a) protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent except that Borrower and its Subsidiaries may abandon or forfeit registrations with respect to such Intellectual Property in jurisdictions outside the United States where, in the good faith business judgment of Borrower's board of directors, the value of the registrations of such Intellectual Property is outweighed by the cost of maintaining such registrations in such jurisdiction. If Borrower or any of its Subsidiaries (i) obtains any US patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then Borrower or such Subsidiary shall substantially promptly provide written notice thereof to Collateral Agent and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such property. If Borrower or any of its Subsidiaries decides to register any copyrights or mask works in the United States Copyright Office, Borrower or such Subsidiary shall: (x) provide Collateral Agent and each Lender with at least fifteen (15) days prior written notice of Borrower's or such Subsidiary's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. Borrower or such Subsidiary shall promptly provide to Collateral Agent and each Lender with evidence of the recording of the intellectual property security agreement necessary for Collateral Agent to perfect and maintain a first priority perfected security interest in such property.

**6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower. Notwithstanding any other provision of this Agreement or any other Loan Document, so long as no Default or Event of Default then exists, Borrower and its Subsidiaries shall have the right to deny or restrict Collateral Agent, the Lenders and their respective representatives, access to highly confidential and proprietary scientific data and specifications, in each case, solely to the extent pertaining to Celution Systems.

**6.9 Notices of Litigation and Default.** Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

**6.10 Financial Covenant.** Borrower and the other Loan Parties shall at all times have unrestricted balance sheet cash and Cash Equivalents in one or more deposit accounts or securities accounts which are subject to a Control Agreement in favor of Collateral Agent of not less than the product of (i) negative three (-3) times (ii) the Cash Burn Amount at such time.

**6.11 Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary (if a Guarantor) will, in the event that the Collateral at any new location (other than a new location that is a Permitted Location) is valued in excess of Two Hundred Fifty Thousand (\$250,000.00) in the aggregate at such location, give Collateral Agent prompt written notice and use commercially reasonable efforts to obtain from such bailee or landlord, as applicable, a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the failure to obtain a fully executed landlord waiver, bailee waiver or other form of collateral access agreement with respect to any location shall not constitute a Default or Event of Default hereunder. As used herein, “**Permitted Locations**” means the following locations: (i) facilities located outside of the United States at which Borrower or its Subsidiaries maintain Celution Systems (as defined below) in ordinary course of business, (ii) locations where Celution Systems may be temporarily located by Borrower or a Subsidiary for use in clinical trials by an unaffiliated third party in ordinary course of business, (iii) locations where Celution Systems may be temporarily located by Borrower or Subsidiary with physicians and other health care providers for demonstration, testing and product development purposes or for general commercial use (including on a lease or placement basis) in ordinary course of business, (iv) locations where Celution Systems may be temporarily located by a Loan Party for maintenance or repair in ordinary course of business (provided, that with respect to the locations described in the immediately preceding clauses (i) through and including (iv), the book value of all Collateral at such locations shall at no time be greater than \$200,000 per location or \$750,000 in the aggregate and such locations may not include the headquarters of Borrower), (v) the bonded warehouse known as FICHTNER Medizintechnik located in Germany (the “Bonded Warehouse”), provided, that the book value of all the Collateral located at the Bonded Warehouse shall at no time be greater than \$500,000, and (vi) locations where portable goods (such as laptops, phones and other similar equipment) may be located with employees or consultants of in the ordinary course of business and locations where Collateral may be temporarily located for sales, testing or demonstration purposes in the ordinary course of business. As used herein, “**Celution Systems**” means the family of products (600, 700, 800, 900/MB & next generation Celution device), which processes patients’ cells at the bedside in real time separating a therapeutic dose of stem and regenerative cells from a patient’s own fat tissue, including a central processing device, a related single-use consumable used for each patient specific procedure, and supportive procedural components.

**6.12 Creation/Acquisition of Subsidiaries.** In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares of each such newly created Subsidiary; provided, however, that solely in the circumstance in which Borrower or any Subsidiary acquires a Foreign Subsidiary (or a Subsidiary wholly-owned by a Foreign Subsidiary) in an acquisition permitted by Section 7.3 hereof, acquires a Subsidiary (or a Subsidiary wholly-owned by a Foreign Subsidiary) in a transaction approved by the Required Lenders or otherwise creates a Foreign Subsidiary, (i) such Foreign Subsidiary (or such Subsidiary wholly-owned by a Foreign Subsidiary) shall not be required to guarantee the Obligations of Borrower under the Loan Documents or to grant a continuing pledge and security interest in and to any of the assets of such Foreign Subsidiary (or such Subsidiary that is wholly-owned by a Foreign Subsidiary), and (ii) neither Borrower nor any Subsidiary shall be required to grant and pledge to Collateral Agent, for the ratable benefit of Lenders, a perfected security interest in more than sixty-five percent (65%) of the Shares of such Foreign Subsidiary (or such Subsidiary that is wholly-owned by a Foreign Subsidiary).

### 6.13 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

## 7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; and (d) in connection with the Designated Transactions (that are consummated substantially in accordance with the terms disclosed to the Lenders and the Collateral Agent prior to the Effective Date).

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower or its Subsidiaries as of the Effective Date or reasonably related or incidental thereto; (b) liquidate or dissolve (other than the liquidation and dissolution of Olympus-Cytori); or (c) (i) any Key Person shall cease to be actively engaged in the day-to-day management of Borrower unless written notice thereof is provided to Collateral Agent within 10 Business Days of such change, or (ii) enter into any transaction or series of related transactions (other than by the sale of Borrower's equity securities in a public offering, a private placement of public equity or to venture capital or private equity investors so long as Borrower identifies to Collateral Agent the venture capital or private equity investors prior to the closing of the transaction) resulting in any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the voting stock of Borrower. Borrower shall not, without at least thirty (30) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations are Permitted Locations or contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries at such location); (B) change its jurisdiction of organization, (C) change its organizational type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person. Notwithstanding the foregoing, Borrower and its Subsidiaries may acquire, directly or indirectly, all or substantially all of the assets or stock of another Person (such Person, the "Target") so long as (a) Collateral Agent and each Lender shall receive at least twenty (20) Business Days' prior written notice of such proposed acquisition, which notice shall include a reasonably detailed description of such proposed acquisition; (b) such acquisition shall comprise a business, or those assets of a business, substantially of the type engaged in by Borrower or its Subsidiaries and which business would not subject Collateral Agent or any Lender to regulatory or third party approvals in connection with the exercise of its rights and remedies under this Agreement or any other Loan Documents other than approvals applicable to the exercise of such rights and remedies with respect to Borrower prior to such acquisition; (c) such acquisition shall be consensual and shall have been approved by Target's board of directors or similar governing body (as applicable); (d) the purchase price paid and/or payable in cash or other property (other than capital stock) in connection with all acquisitions (including all transaction costs and all Indebtedness, liabilities and contingent obligations incurred or assumed in connection therewith or otherwise reflected in a consolidated balance sheet of Borrower and Target) shall not exceed \$1,000,000 during the term of this Agreement; (e) with respect to an acquisition paid for in whole or in part with capital stock, such acquisition shall not result in any decrease in the Tangible Net Worth (as defined below) of Borrower; (f) the business and assets acquired in such acquisition shall be free and clear of all Liens (other than Permitted Liens); (g) at or prior to the closing of any acquisition, unless the acquiring entity is a Foreign Subsidiary, Collateral Agent will be granted a first priority perfected Lien (subject to Permitted Liens), for the ratable benefit of Collateral Agent and Lenders, in all assets or stock acquired pursuant thereto and Borrower shall have executed such documents and taken such actions as may be required by Collateral Agent in connection therewith; (h) at the time of such acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing; and (i) immediately after the consummation of such acquisition and after giving effect thereto, Borrower shall have unrestricted balance sheet cash and Cash Equivalents in one or more deposit accounts or securities accounts over which Collateral Agent has obtained control of not less than the product of (x) negative twelve (-12) times (y) the Cash Burn Amount based on pro forma financial statements that are delivered to and approved by Collateral Agent and the Lenders. "Tangible Net Worth" means, on any date, the consolidated total assets of Borrower and its Subsidiaries minus, (x) any amounts attributable to (1) goodwill, (2) intangible items such as unamortized debt discount and expense, patents, trade and service marks and names, copyrights and research and development expenses except prepaid expenses, and (3) reserves not already deducted from assets, and (y) the obligations that should, under GAAP, be classified as liabilities on Borrower's consolidated balance sheet, including all Indebtedness. In addition, a Foreign Subsidiary may merge or consolidate into another Foreign Subsidiary or a U.S. Subsidiary, and any U.S. Subsidiary may merge or consolidate into another U.S. Subsidiary (provided such surviving Subsidiary (other than a Foreign Subsidiary) is a "co-Borrower" hereunder or has provided a secured Guaranty of Borrower's Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent's Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "**Permitted Liens**" herein and except for customary restrictions on assignment, pledge and transfer contained in licenses under which Borrower or a Subsidiary is the licensee.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution (other than distributions payable solely in capital stock) or payment in respect of or redeem, retire or purchase any of its capital stock, in each case, other than (i) dividends and distributions by a Subsidiary of any Loan Party to a Loan Party, (ii) the conversion or exchange of debt securities or equity securities into capital stock, (iii) the issuance of capital stock upon the exercise or conversion of warrants or options, (iv) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per fiscal year, and (v) dividends and distributions in connection with the Designated Transactions in accordance with the terms set forth in the Disclosure Letter; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions that would be Permitted Investments pursuant to part (i), (l) or (m) of the definition of "Permitted Investments", (c) transactions among Borrower and any Guarantor or among Guarantors, or among Subsidiaries that are not Guarantors, (d) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries, and (e) dividends and distributions expressly permitted under Section 7.7(a).



**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

**7.10 Compliance.** Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.11 Compliance with Anti-Terrorism Laws.** Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent’s policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

## **8. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

**8.2 Covenant Default.**

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.10 (Financial Covenant), 6.12 (Creation/Acquisition of Subsidiaries) or Borrower violates any covenant in Section 7 or Section 13; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the earlier of (i) the date on which an executive officer (including, without limitation, a president, chief executive officer, chief financial officer, secretary, vice president or general counsel) of Borrower becomes aware, or through the exercise of reasonable diligence should have become aware, of such failure and (ii) the date on which notice shall have been given to Borrower from Collateral Agent; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

**8.3 Material Adverse Change.** A Material Adverse Change occurs;

**8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries (taken as a whole) or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's and its Subsidiaries' assets (taken as a whole) is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

**8.5 Insolvency.** (a) Borrower and its Subsidiaries, taken as a whole, are or become Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default in any agreement to which Borrower or any of the other Loan Parties is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred and Fifty Thousand Dollars (\$250,000.00) or that could reasonably be expected to have a Material Adverse Change; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a default under such other agreement shall be cured or waived for purposes of this Agreement upon Collateral Agent receiving written notice from the party asserting such default of such cure or waiver of the default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Collateral Agent has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith judgment of Collateral Agent be materially more burdensome to Borrower;

**8.7 Judgments.** One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Three Hundred Thousand Dollars (\$300,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of thirty (30) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made or deemed made;

**8.9 Subordinated Debt.** A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

**8.10 Governmental Approvals.** Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

**8.11 Lien Priority.** Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

## **9. RIGHTS AND REMEDIES**

### **9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right without notice or demand, to do any or all of the following:

- (i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

- (ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or
  - (iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.
- (c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:
- (i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;
  - (ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;
  - (iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;
  - (iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;
  - (v) demand and receive possession of Borrower's Books;
  - (vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries;
  - (vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);
  - (viii) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit; and
  - (ix) terminate any FX Contracts.

(d) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a), (b) and (c) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to terminate, upon written notice to Borrower, Borrower's and its Subsidiaries' right to continue to enter into non-exclusive licenses in the ordinary course of business.

Collateral Agent may only give a Notice of Exclusive Control with respect to any deposit account or securities account at any time at which an Event of Default has occurred and is continuing.

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices and the Code regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

**10. NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	Cytori Therapeutics, Inc. 3020 Callan Road San Diego, California 92121 Attn: Mark E. Saad Fax: (858) 450-4355 Email: <a href="mailto:msaad@cytori.com">msaad@cytori.com</a>
with a copy (which shall not constitute notice) to:	Cytori Therapeutics, Inc. 3020 Callan Road San Diego, California 92121 Attn: In-House Counsel Fax: (858) 450-4335 Email: <a href="mailto:jsoneff@cytori.com">jsoneff@cytori.com</a>
If to Collateral Agent or Oxford:	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax: (703) 519-5225 Email: <a href="mailto:LegalDepartment@oxfordfinance.com">LegalDepartment@oxfordfinance.com</a>
with a copy (which shall not constitute notice) to:	Greenberg Traurig, LLP One International Place Boston, MA 02110 Attn: Jonathan Bell, Esq. Fax: (617) 279-8438 Email: <a href="mailto:Bellj@gtlaw.com">Bellj@gtlaw.com</a>
If to SVB:	SILICON VALLEY BANK Silicon Valley Bank 4370 La Jolla Village Drive Suite 1050 San Diego, CA 92122 Attn: Kevin Wallace Fax: (858)622-1424 Email: <a href="mailto:kwallace@svb.com">kwallace@svb.com</a>
with a copy (which shall not constitute notice) to:	Cooley LLP 4401 Eastgate Mall San Diego, CA 92121-1909 Attn: Karla A. Lyon, Esq. Fax: (858) 550-6420 Email: <a href="mailto:klyon@cooley.com">klyon@cooley.com</a>

**11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE**

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.



## 12. GENERAL PROVISIONS

**12.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants (which shall be governed by the terms of the Warrants) or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund or distressed debt purchaser, each as determined by Collateral Agent.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

**12.3 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**12.4 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.5 Correction of Loan Documents.** Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

**12.6 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.7 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.8 Survival.** All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.9 Confidentiality.** In handling any confidential information of Borrower or any of its Subsidiaries, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order provided that Collateral Agent and each Lender shall use reasonable efforts to provide prior written notice to Borrower of such disclosure, unless such notice is prohibited by applicable law or an order of a governmental authority; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein and the persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent (other than by the actions of the Lenders and/or Collateral Agent); or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may also: (i) use confidential information for any of their internal record keeping, due diligence, risk analysis, market analysis, maintenance and development of client databases, statistical and reporting purposes; (ii) use Borrower's name and the principal terms of the Loans for customary client reference purposes; and (iii) use masked confidential information for regulatory reporting purposes to the extent required by or advisable under applicable law. The provisions of this Section 12.9 shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

**12.10 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.11 Silicon Valley Bank as Agent.** Collateral Agent hereby appoints SVB as its agent (and SVB hereby accepts such appointment) for the purpose of perfecting Collateral Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control, including without limitation, all Deposit Accounts maintained at SVB.

**12.12 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

### 13. JOINT VENTURE TERMINATION

Notwithstanding anything in this Agreement to the contrary, (a) Borrower may purchase certain assets (including without limitation all stock of Olympus-Cytori that is owned by Olympus) from Olympus pursuant to the terms of a JV Termination Agreement, and (b) Borrower may perform all of its obligations under the JV Termination Agreement, except that Borrower may not make any payments of the “Total Purchase Price” (as such term is defined in the JV Termination Agreement) other than the “Initial Payment”, each “Installment Payment” and any payments in connection with the exercise of the “Olympus Payment Option” (as each of such terms are defined in the JV Termination Agreement); provided, however, that (i) Borrower shall deliver to Collateral Agent a copy of any other agreements or documents executed or delivered in connection with JV Agreement promptly upon the execution and delivery thereof, (ii) Borrower may not make any payments to Olympus pursuant to the “One Year Payment Option”, the “Two Year Payment Option”, or the “Extended Payment Option” (as such terms are defined in the JV Termination Agreement) except for each “Installment Payment”, without the prior written consent of Collateral Agent and the Required Lenders, (iii) promptly upon the effectiveness of the assignment to Borrower of the “Assigned Patents” under (and as such term is defined in the JV Termination Agreement, the Borrower will execute a supplement to the IP Agreement to include such Assigned Patents, to be filed in the United States Patent and Trademark Office, (iv) as soon as practicable (in light of the time period necessary to transfer certain assets to Olympus-Cytori as contemplated by the JV Termination Agreement) following the effectiveness of the JV Termination Agreement, Borrower will initiate dissolution of Olympus-Cytori and use its best efforts to complete such dissolution at the earliest date thereafter (and provide evidence of its dissolution to Collateral Agent promptly thereafter) and cause all of the assets of Olympus-Cytori to be transferred and assigned to Borrower, and Borrower will execute such other documents and take such other actions as may be required by Collateral Agent for Collateral Agent to obtain a security interest in all such transferred assets of Olympus-Cytori, and (v) notwithstanding the provisions of this Agreement to the contrary, until Olympus-Cytori is dissolved as described in the foregoing clause (iv), Borrower shall not make Investments in Olympus-Cytori in excess of \$50,000 in the aggregate. The failure of Borrower to take any action or satisfy any conditions described in the preceding sentence shall constitute an immediate Event of Default hereunder.

### 14. DEFINITIONS

**14.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Amortization Date**” is August 1, 2014, or if the Revenue Event occurs (and evidence of its occurrence reasonably satisfactory to the Collateral Agent is provided to the Collateral Agent no later than July 25, 2014) then February 1, 2015.

“**Annual Projections**” is defined in Section 6.2(a).

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” is defined in Section 12.1.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank**” is defined in the preamble hereof.

“**Basic Rate**” is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) Nine and Three-Quarters percent (9.75%) and (ii) the sum of (a) the three (3) month U.S. LIBOR rate reported in the Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) Nine and Forty-Seven Hundredths percent (9.47%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Burn Amount**” means, with respect to Borrower and its consolidated Subsidiaries, as of any date of determination and based on the financial statements most recently delivered to Collateral Agent and the Lenders in accordance with this Agreement:

(1) the product of (i) the sum of, without duplication, (A) net income (loss), plus (B) depreciation, amortization and other non-cash charges (excluding accruals for cash expenses made in the ordinary course of business), minus (C) non-financed capital expenditures, minus (D) non-cash revenue, in each case of clauses (A), (B), (C) and (D), for the immediately preceding six month period on a trailing basis, divided by (ii) six, minus

(2) the product of (i) the current portion of interest bearing liabilities due and payable in the immediately succeeding six months divided by (ii) six.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an

“**Auction Rate Security**”).

“**Celuton Systems**” are defined in Section 6.11.

“**Claims**” are defined in Section 12.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

“**Collateral Agent**” is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account designated in writing to Collateral Agent prior to the Effective Date.

“**Designated Transactions**” means those certain transactions described in the Disclosure Letter.

“**Disbursement Letter**” is that certain form attached hereto as Exhibit B-1.

“**Disclosure Letter**” means the disclosure letter dated as of the Effective Date containing certain disclosures and schedules delivered by Borrower to Collateral Agent, on behalf of the Lenders.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Existing Indebtedness**” is the indebtedness of Borrower to Oxford Finance LLC, Silicon Valley Bank and General Electric Capital Corporation in the aggregate principal outstanding amount as of the Effective Date of approximately Seventeen Million Three Hundred Thousand Dollars (\$17,300,000) pursuant to that certain Amended and Restated Loan and Security Agreement, dated June 11, 2010, entered into by and between General Electric Capital Corporation and Borrower, as subsequently amended to, among other things, include Oxford Finance LLC and Silicon Valley Bank as lenders thereunder.

“**Event of Default**” is defined in Section 8.

“**Final Payment**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Final Payment Percentage**” is three percent (3.00%).

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

“**Funding Date**” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.



**“General Intangibles”** are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**“Governmental Approval”** is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**“Governmental Authority”** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Guarantor”** is any Person providing a Guaranty in favor of Collateral Agent with the Required Lenders’ and the Collateral Agent’s approval (which approval may be withheld by the Required Lenders or the Collateral Agent in their or its respective discretion).

**“Guaranty”** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**“Indebtedness”** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

**“Indemnified Person”** is defined in Section 12.2.

**“Insolvency Proceeding”** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Insolvent”** means not Solvent.

**“Intellectual Property”** means all of Borrower’s or any Subsidiary’s right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Inventory”** is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

**“JV Termination Agreement”** is that certain Joint Venture Termination Agreement, dated May 8, 2013, by and between Borrower and Olympus regarding, among other things, the termination of a joint venture carried out pursuant to Olympus-Cytori.

**“IP Agreement”** is that certain Intellectual Property Security Agreement entered into by and between Borrower and Collateral Agent dated as of the Effective Date, as such may be amended from time to time.

**“Key Person”** is each of Borrower’s (i) Chief Executive Officer, who is Christopher J. Calhoun as of the Effective Date, and (ii) Chief Financial Officer, who is Mark E. Saad as of the Effective Date.

**“Lender”** is any one of the Lenders.

**“Lenders”** are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

**“Lenders’ Expenses”** are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

**“Letter of Credit”** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

**“Lien”** is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Loan Documents”** are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, each Loan Payment/Advance Request Form and any Bank Services Agreement, the Post Closing Letter, the IP Agreement, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

**“Loan Parties”** means, collectively, Borrower and the Guarantors.

**“Loan Payment/Advance Request Form”** is that certain form attached hereto as Exhibit B-2.

**“Material Adverse Change”** is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or financial condition of Borrower and its Subsidiaries, taken as a whole; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

**“Maturity Date”** is, for the Term Loan, July 1, 2017.

**“Obligations”** are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents (other than the Warrants).

**“OFAC”** is the U.S. Department of Treasury Office of Foreign Assets Control.

**“OFAC Lists”** are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

**“Olympus”** means Olympus Corporation, a corporation organized and existing under the laws of Japan.

**“Olympus-Cytori”** means Olympus-Cytori, Inc., a Delaware corporation.

**“Operating Documents”** are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**“Payment Date”** is the first (1<sup>st</sup>) calendar day of each calendar month, commencing on August 1, 2013.

**“Perfection Certificate”** and **“Perfection Certificates”** is defined in Section 5.1.

**“Permitted Indebtedness”** is:

- (a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value (plus taxes, shipping and installation expenses) of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) obligations under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement entered into in the ordinary course of business and designed to alter the risks arising from fluctuations in currency values or interest rates, but not for speculative purposes;

(h) guaranties by Borrower or any Guarantor of obligations or liabilities of other Borrowers or Guarantors Loan Parties, so long as no Default or Event of Default would occur either before or after giving effect to any such guaranty

(i) Indebtedness incurred by Foreign Subsidiaries from third party financial institutions in an aggregate outstanding amount not in excess of \$250,000 at any time;

(j) Indebtedness consisting of SVB Cash Management Obligations owing by Borrower to Silicon Valley Bank in an amount not to exceed \$250,000 in the aggregate at any time;

(k) Indebtedness consisting of Wells Fargo L/C Obligations owing by Borrower to Wells Fargo Bank, N.A. in an amount not to exceed \$350,000 in the aggregate at any time;

(l) Indebtedness owing by any Loan Party to another Loan Party, provided that (i) each Loan Party shall have executed and delivered to each other Loan Party a demand note (each, an "Intercompany Note") to evidence such intercompany loans or advances owing at any time by each Loan Party to the other Loan Parties, which Intercompany Note shall be in form and substance reasonably satisfactory to Agent and shall be pledged and delivered to Agent pursuant to the Pledge Agreement as additional Collateral for the Obligations, (ii) any and all Indebtedness of any Loan Party to another Loan Party shall be subordinated to the Obligations pursuant to the subordination terms set forth in each Intercompany Note, and (iii) no Default or Event of Default would occur either before or after giving effect to any such Indebtedness;

(m) Intercompany Indebtedness corresponding to Investments of the type described in clause (l) of the definition of Permitted Investments; and

(n) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (m) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

**"Permitted Investments"** are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy attached hereto as Exhibit E, provided that any amendment thereto must be approved in writing by Collateral Agent (such approval not to be unreasonably withheld);

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Deposit Accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed One Hundred Thousand Dollars (\$100,000) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph shall not apply to Investments of Borrower in any Subsidiary;

(i) Investments by Borrower consisting of notes receivable or equity investments in one or more Subsidiaries made pursuant to arm's length transactions not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year for each Subsidiary;

(j) Investments in joint ventures or strategic alliances in the ordinary course of business consisting of the licensing of technology, the development of technology or the providing of support, provided that (I) any cash Investments do not exceed \$250,000 in the aggregate in any fiscal year and (II) no Default or Event of Default exists at the time of such Investment or would be caused after giving effect thereto;

(k) leases and placements of Celution Systems to physicians or other health care providers in accordance with clause (iii) of the definition of Permitted Locations in Section 6.11;

(l) Investments (i) by Borrower and any Guarantor in Borrower or another Guarantor; (ii) by Subsidiaries that are not Guarantors in Borrower or any other Subsidiary; (iii) by Subsidiaries that are not Guarantors in other Subsidiaries that are not Guarantors; and (iv) by Borrower and any Guarantor in a Subsidiary that is not a Guarantor, in an aggregate amount not to exceed (i) Three Hundred Thousand Dollars (\$300,000) per quarter in the aggregate for Borrower's Japan Subsidiary; and (ii) One Hundred Twenty-Five Thousand Dollars (\$125,000) per quarter in the aggregate for all other Subsidiaries (and which aggregate amounts shall include, without duplication, loans made pursuant to clause (n) of the definition of Permitted Indebtedness); and

(m) Investments consisting of the creation of Subsidiaries, provided that the amount of any loans or capital contributions in such Subsidiaries shall otherwise qualify as Permitted Investments.

**"Permitted Licenses"** are (A) licenses of over-the-counter software that is commercially available to the public, (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, (C) exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (C), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers five (5) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers (to the extent permitted under any applicable confidentiality or non-disclosure arrangements) to Collateral Agent and the Lenders copies of the final executed licensing documents entered into in connection with the exclusive license promptly upon consummation thereof (provided that Borrower shall use commercially reasonable efforts to ensure that the confidentiality provisions of such licensing documentation permit Borrower to deliver such documents to Collateral Agent and the Lenders, and if the Borrower fails to obtain such permission, Borrower shall deliver to Collateral Agent and the Lenders such licensing documentation redacted to the extent necessary to comply with such confidentiality restrictions) and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement; (D) licenses under which Borrower or a Subsidiary is the licensee that are disclosed on the Perfection Certificate or are otherwise immaterial to the business of Borrower and its Subsidiaries, taken as a whole; (E) licenses permitted under clause (j) of the definition of Permitted Investments; and (F) licenses granted in connection with the Designated Transactions.

“Permitted Liens” are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificate or arising under this Agreement or the other Loan Documents (other than Liens that pursuant to the express terms hereof are to be removed on or before the Effective Date);

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not yet delinquent or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) Liens securing Indebtedness permitted under clause (e) of the definition of “Permitted Indebtedness,” provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker’s liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower’s deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses, overdraft obligations or other obligations permitted to be secured by the applicable account control agreement in favor of Collateral Agent for the benefit of the Lenders, and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) Liens consisting of Permitted Licenses;

(k) the rights and interests of licensors under licenses (but restricted to the assets that are subject to such licenses) where Borrower or a Subsidiary is the licensee;

(l) zoning restrictions, easements, rights of way, encroachments or other restrictions on the use of, and other minor defects or irregularities in title with respect to, any real property of Borrower or its Subsidiaries so long as the same do not materially impair the use of such real property by Borrower or such Subsidiary;

(m) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) Liens of Silicon Valley Bank on a Certificate of Deposit in an aggregate amount not to exceed \$250,000 (the "SVB Certificate of Deposit") issued by Silicon Valley Bank to Borrower to secure the SVB Cash Management Obligations;

(p) Liens of Wells Fargo Bank, N.A. on a Certificate of Deposit in an aggregate amount not to exceed \$350,000 (the "Wells Fargo Certificate of Deposit") issued by Wells Fargo Bank, N.A. to Borrower to secure the Wells Fargo L/C Obligations; and

(q) Liens of landlords (i) arising by statute or under any lease or related contractual obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted, (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Loan Party in accordance with GAAP and (v) which Liens are subordinated to the security interests granted hereunder pursuant to a landlord waiver, to the extent required hereunder.

"**Permitted Locations**" are defined in Section 6.11.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Post Closing Letter**" is that certain Post Closing Letter dated as of the Effective Date by and between Collateral Agent and Borrower.

"**Prepayment Fee**" is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Funding Date of such Term Loan through and including the first anniversary of the Funding Date of such Term Loan, three percent (3.00%) of the outstanding principal amount of such Term Loan prepaid;

(ii) for a prepayment made after the date which is after the first anniversary of the Funding Date of such Term Loan through and including the second anniversary of the Funding Date of such Term Loan, two percent (2.00%) of the outstanding principal amount of the Term Loan prepaid; and

(iii) for a prepayment made after the date which is after the second anniversary of the Funding Date of such Term Loan, one percent (1.00%) of the outstanding principal amount of the Term Loan prepaid.

**“Pro Rata Share”** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loan held by such Lender by the aggregate outstanding principal amount of all Term Loan.

**“Registered Organization”** is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

**“Required Lenders”** means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an **“Original Lender”**) have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender’s interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

**“Requirement of Law”** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”** is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

**“Revenue Event”** is the achievement by Borrower of consolidated net revenues of at least Twenty-Seven Million Dollars (\$27,000,000) for the trailing twelve month period ending June 30, 2014, as determined by Collateral Agent based upon written evidence satisfactory to Collateral Agent.

**“Secured Promissory Note”** is defined in Section 2.4.

**“Secured Promissory Note Record”** is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

**“Securities Account”** is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

**“Shares”** is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower’s Subsidiary (other than a Foreign Subsidiary), in any Subsidiary; provided that, “Shares” shall mean sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in any Foreign Subsidiary and zero percent of the issued and outstanding capital stock, membership units or other securities owned or held of record by any Foreign Subsidiary.

**“Solvent”** is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.



**“Subordinated Debt”** is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

**“Subsidiary”** is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

**“SVB Cash Management Obligations”** means obligations, Indebtedness and liabilities to Silicon Valley Bank with respect to (i) credit card, payroll and foreign exchange services provided by Silicon Valley Bank to Borrower or its Subsidiaries and (ii) standby letters of credit issued by Silicon Valley Bank on behalf of Borrower or its Subsidiaries.

**“Term Loan”** is defined in Section 2.2(a)(ii) hereof.

**“Term Loan Commitment”** is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. **“Term Loan Commitments”** means the aggregate amount of such commitments of all Lenders.

**“Trademarks”** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

**“Transfer”** is defined in Section 7.1.

**“Warrants”** are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender’s Affiliates.

**“Wells Fargo L/C Obligations”** means reimbursement obligations with respect to a letter of credit issued for the benefit of the landlord with respect to the lease of the facilities located at 3020 Callan Rd, San Diego, California 92121.

***[Balance of Page Intentionally Left Blank]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

CYTORI THERAPEUTICS, INC.

By           /s/ Mark E Saad            
Name:           Mark E. Saad            
Title:           CFO          

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By           /s/ Mark Davis            
Name:           Mark Davis            
Title:           Vice President - Finance, Secretary            
          & Treasurer          

**LENDER:**

SILICON VALLEY BANK

By           /s/ Kevin Wallace            
Name:           Kevin Wallace            
Title:           Vice President          

*[Signature Page to Loan and Security Agreement]*

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SCHEDULE 1.1

Lenders and Commitments

**Term Loan**

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
OXFORD FINANCE LLC	\$24,000,000	88.89%
SILICON VALLEY BANK	\$3,000,000	11.11%
<b>TOTAL</b>	<b>\$27,000,000</b>	<b>100.00%</b>

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NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 185,594 SHARES OF COMMON STOCK

Warrant No. CSW-13-001

June 28, 2013

**THIS CERTIFIES THAT**, for value received, Oxford Finance LLC (“Holder”) is entitled to subscribe for and purchase 185,594 shares of fully paid and nonassessable Common Stock of Cytori Therapeutics Inc., a Delaware corporation (the “Company”), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term “Common Stock” shall mean Company’s presently authorized common stock, \$0.001 par value per share, and any stock into which such common stock may hereafter be converted or exchanged and the term “Warrant Shares” shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

This Warrant is issued pursuant to that certain Loan and Security Agreement, dated as of June 28, 2013, by and among Company, the other entities or persons signatory thereto as loan parties, Oxford Finance LLC, a Delaware limited liability company, as agent and lender, and the other financial institutions signatory thereto from time to time as lenders.

1. Warrant Price. The “Warrant Price” shall initially be Two dollars and Twenty-Six cents (\$2.26) per share, subject to adjustment as provided in Section 7 below.

2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the seventh anniversary of the date of this Warrant (the “Expiration Date”).

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company (as set forth in Section 19 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company’s expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.

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(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

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

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of the Wall Street Journal for the ten (10) trading days prior to the date of determination of Fair Market Value; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the per share Fair Market Value for the Common Stock shall be the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined by the Board of Directors; or

(iii) In any other instance, the per share Fair Market Value for the Common Stock shall be as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of 3(c)(ii) or 3(c)(iii), above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certification must be made to Holder at least ten (10) business days prior to the proposed effective date of the merger, consolidation, sale, or other triggering event as defined in 3(c)(ii) or 3(c)(iii).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

(ii) Cash Acquisition. In the event of an Acquisition in which the sole consideration is cash, Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to expire automatically upon the consummation of such Acquisition. Company shall provide Holder with written notice of any proposed Acquisition together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale.

Company shall provide Holder with written notice of any proposed asset sale together with such reasonable information as Holder may request in connection with such asset sale giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed asset sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than those particularly described in subsections (ii) and (iii) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Warrant Shares shall be adjusted accordingly.

(v) Early Termination of Warrant in Certain Other Circumstances. Notwithstanding the foregoing provisions of Section 3(e) (iv), but subject to the terms of Section 3(d), in the event that the acquiror in an Acquisition does not agree to assume this Warrant at and as of the closing of such Acquisition, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following the closing of such Acquisition if all of the following conditions are met: (A) the acquiror is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (B) the class of stock or other security of the acquiror that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, and (C) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquiror stock and/or other securities that would be received by Holder in respect of each Warrant Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the “Securities”) for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder does not presently have any agreement, plan or understanding, directly or indirectly, with any person to distribute or effect the distribution of any of the Securities to or through any person. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the “Act”) by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity, if it so requested, to discuss Company’s business, management and financial affairs with its management and an opportunity to review Company’s facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company’s business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing in its jurisdiction of incorporation; (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.



(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation or this Warrant. Assuming the truth and accuracy of Holder's representations and warranties set forth in Section 4(a), no registration under the Act is required for the offer and sale of this Warrant or the issuance of the Warrant Shares, pursuant to the terms of this Warrant and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2012 (such reports are collectively referred to herein as the "Company Reports"). The Company Reports constitute all of the documents required to be filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC from December 31, 2012 through the date of this Warrant. The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of their respective dates of filing with the SEC, the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. Legends.

- (a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

- (b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Condition of Transfer or Exercise of Warrant.

(a) It shall be a condition to any transfer or exercise of this Warrant that at the time of such transfer or exercise, Holder shall provide Company with a representation in writing that Holder or transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, or will provide Company with a statement of pertinent facts covering any proposed distribution; provided, that in the case of a transfer of this Warrant, such requirement shall be deemed satisfied by the execution and delivery to the Company by Holder and the transferee of an Assignment in substantially the form attached hereto as Exhibit B. As a further condition to any transfer of this Warrant or any or all of the shares of Common Stock issuable upon exercise of this Warrant, other than a transfer registered under the Act, Company may request a legal opinion, in form and substance satisfactory to Company and its counsel, reciting the pertinent circumstances surrounding the proposed transfer and stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act. Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" within the meaning of Regulation D under the Act. Furthermore, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act, unless an opinion of counsel is required by the Company's transfer agent to effect such transfer. As further condition to each transfer, at the request of Company, Holder shall surrender this Warrant to Company and the transferee shall receive and accept a Warrant, of like tenor and date, executed by Company.

(b) Notwithstanding anything to the contrary herein (including but not limited to the provisions of subsection (a) above and Section 10 below), after receipt by Oxford Finance LLC ("Oxford") of this executed Warrant, Oxford may transfer this Warrant to an Affiliate of Oxford (as the term Affiliate is defined under the Securities Act of 1933, as amended) without notifying the Company. In the event of such transfer, by accepting transfer of this Warrant and as a condition to the effectiveness of such transfer, such Affiliate of Oxford shall be deemed to have made to Company the representations and warranties set forth in Section 4(a) hereof.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, subject to the provisions of Section 3(e) hereof, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price pursuant to clause (i) of Section 7(c), the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 19 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 45 days of each fiscal quarter end, in a form acceptable to Holder and certified by Company's president or chief financial officer, and (b) annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and reasonably satisfactory to Holder within 120 days of the fiscal year end or, if sooner, promptly after such time as Company's Board of Directors receives the audit; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such reports.

10. Transferability of Warrant. This Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with Section 6 and applicable federal and state securities laws. Company shall issue and deliver to the transferee a new Warrant representing the Warrant so transferred. Upon any partial transfer, Company will issue and deliver to Holder a new Warrant with respect to the portion of the Warrant not so transferred.

11. **Reserved.**

12. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

13. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

14. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

15. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

16. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, on delivery of an indemnity reasonably satisfactory to Company in form and amount, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

17. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

18. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, 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 Holder hereof against impairment; provided, however, that notwithstanding the foregoing, nothing in this Warrant shall restrict or impair Company's right to effect changes to the rights, preferences, and privileges associated with the Warrant Shares with the requisite consent of the stockholders as may be required to amend its Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Warrant Shares in the same manner as the other holders of outstanding shares of the same class.

19. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 19.

If to Company: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

With a copy to: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: In-House Counsel

If to Holder: Oxford Finance LLC  
133 North Fairfax Street  
Alexandria, VA 22314  
Attention: Legal Department  
Facsimile: (703) 519-5225

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day), and if sent by facsimile transmission to the facsimile number provided in this Section 19, on the date of transmission, provided that the sender receives a machine-generated confirmation of successful transmission completed before 5:00 p.m. Pacific time (if on a business day, and if not, on the next business day).

20. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, (iii) in connection with strategic transactions for purposes other than capital raising, or (iv) the issuance of any shares of the Company's capital stock upon the exercise of any warrants outstanding as of the date hereof; (c) to effect any reclassification or recapitalization of any of its stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such information.

21. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

22. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Remainder of page intentionally blank; signature page follows]



IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized on the date specified above.

**CYTORI THERAPEUTICS INC.**

By: /s/ Mark E. Saad

Name: Mark E. Saad

Title: Chief Financial Officer

ACCEPTED AND AGREED TO:

**OXFORD FINANCE LLC**

By: /s/ Mark Davis

Name: Mark Davis

Title: Vice President – Finance, Secretary  
& Treasure

*[Signature Page to Warrant]*

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EXHIBIT A  
NOTICE OF EXERCISE

To:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Common Stock (the "Common Stock") of Cytori Therapeutics Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated June 28, 2013 (the "Warrant").
2. Holder exercises its rights under the Warrant as set forth below (check one):  

Holder elects to purchase \_\_\_\_\_ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$\_\_\_\_\_ as payment of the purchase price.

Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Taxpayer I.D.: \_\_\_\_\_

[NAME OF HOLDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

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EXHIBIT B

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [ASSIGNEE]

Address:

Tax ID:

that certain Warrant to Purchase Shares of Common Stock issued by Cytori Therapeutics Inc. (the "Company"), on June 28, 2013 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By:  
Name:  
Title:

Date:

By its execution below, and for the benefit of the Company, [ASSIGNEE] makes each of the representations and warranties set forth in Section 4(a) of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[ASSIGNEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 162,395 SHARES OF COMMON STOCK

Warrant No. CSW-13-002

June 28, 2013

**THIS CERTIFIES THAT**, for value received, Oxford Finance LLC ("Holder") is entitled to subscribe for and purchase 162,395 shares of fully paid and nonassessable Common Stock of Cytori Therapeutics Inc., a Delaware corporation (the "Company"), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term "Common Stock" shall mean Company's presently authorized common stock, \$0.001 par value per share, and any stock into which such common stock may hereafter be converted or exchanged and the term "Warrant Shares" shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

This Warrant is issued pursuant to that certain Loan and Security Agreement, dated as of June 28, 2013, by and among Company, the other entities or persons signatory thereto as loan parties, Oxford Finance LLC, a Delaware limited liability company, as agent and lender, and the other financial institutions signatory thereto from time to time as lenders.

1. Warrant Price. The "Warrant Price" shall initially be Two dollars and Twenty-Six cents (\$2.26) per share, subject to adjustment as provided in Section 7 below.
  2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the seventh anniversary of the date of this Warrant (the "Expiration Date").
  3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.
    - (a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company (as set forth in Section 19 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.
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(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

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

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of the Wall Street Journal for the ten (10) trading days prior to the date of determination of Fair Market Value; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the per share Fair Market Value for the Common Stock shall be the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined by the Board of Directors; or

(iii) In any other instance, the per share Fair Market Value for the Common Stock shall be as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of 3(c)(ii) or 3(c)(iii), above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certification must be made to Holder at least ten (10) business days prior to the proposed effective date of the merger, consolidation, sale, or other triggering event as defined in 3(c)(ii) or 3(c)(iii).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

(ii) Cash Acquisition. In the event of an Acquisition in which the sole consideration is cash, Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to expire automatically upon the consummation of such Acquisition. Company shall provide Holder with written notice of any proposed Acquisition together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale. Company shall provide Holder with written notice of any proposed asset sale together with such reasonable information as Holder may request in connection with such asset sale giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed asset sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than those particularly described in subsections (ii) and (iii) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Warrant Shares shall be adjusted accordingly.

(v) Early Termination of Warrant in Certain Other Circumstances. Notwithstanding the foregoing provisions of Section 3(e)(iv), but subject to the terms of Section 3(d), in the event that the acquiror in an Acquisition does not agree to assume this Warrant at and as of the closing of such Acquisition, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following the closing of such Acquisition if all of the following conditions are met: (A) the acquiror is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (B) the class of stock or other security of the acquiror that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, and (C) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquiror stock and/or other securities that would be received by Holder in respect of each Warrant Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the "Securities") for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder does not presently have any agreement, plan or understanding, directly or indirectly, with any person to distribute or effect the distribution of any of the Securities to or through any person. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the "Act") by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity, if it so requested, to discuss Company's business, management and financial affairs with its management and an opportunity to review Company's facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company's business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(c) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing in its jurisdiction of incorporation; (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.



(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation or this Warrant. Assuming the truth and accuracy of Holder's representations and warranties set forth in Section 4(a), no registration under the Act is required for the offer and sale of this Warrant or the issuance of the Warrant Shares, pursuant to the terms of this Warrant and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2012 (such reports are collectively referred to herein as the "Company Reports"). The Company Reports constitute all of the documents required to be filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC from December 31, 2012 through the date of this Warrant. The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of their respective dates of filing with the SEC, the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. Legends.

- (a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

- (b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Condition of Transfer or Exercise of Warrant.

(a) It shall be a condition to any transfer or exercise of this Warrant that at the time of such transfer or exercise, Holder shall provide Company with a representation in writing that Holder or transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, or will provide Company with a statement of pertinent facts covering any proposed distribution; provided, that in the case of a transfer of this Warrant, such requirement shall be deemed satisfied by the execution and delivery to the Company by Holder and the transferee of an Assignment in substantially the form attached hereto as Exhibit B. As a further condition to any transfer of this Warrant or any or all of the shares of Common Stock issuable upon exercise of this Warrant, other than a transfer registered under the Act, Company may request a legal opinion, in form and substance satisfactory to Company and its counsel, reciting the pertinent circumstances surrounding the proposed transfer and stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act. Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" within the meaning of Regulation D under the Act. Furthermore, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act, unless an opinion of counsel is required by the Company's transfer agent to effect such transfer. As further condition to each transfer, at the request of Company, Holder shall surrender this Warrant to Company and the transferee shall receive and accept a Warrant, of like tenor and date, executed by Company.

(b) Notwithstanding anything to the contrary herein (including but not limited to the provisions of subsection (a) above and Section 10 below), after receipt by Oxford Finance LLC ("Oxford") of this executed Warrant, Oxford may transfer this Warrant to an Affiliate of Oxford (as the term Affiliate is defined under the Securities Act of 1933, as amended) without notifying the Company. In the event of such transfer, by accepting transfer of this Warrant and as a condition to the effectiveness of such transfer, such Affiliate of Oxford shall be deemed to have made to Company the representations and warranties set forth in Section 4(a) hereof.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, subject to the provisions of Section 3(e) hereof, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price pursuant to clause (i) of Section 7(c), the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 19 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 45 days of each fiscal quarter end, in a form acceptable to Holder and certified by Company's president or chief financial officer, and (b) annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and reasonably satisfactory to Holder within 120 days of the fiscal year end or, if sooner, promptly after such time as Company's Board of Directors receives the audit; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such reports.

10. Transferability of Warrant. This Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with Section 6 and applicable federal and state securities laws. Company shall issue and deliver to the transferee a new Warrant representing the Warrant so transferred. Upon any partial transfer, Company will issue and deliver to Holder a new Warrant with respect to the portion of the Warrant not so transferred.

11. **Reserved.**

12. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

13. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

14. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

15. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

16. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, on delivery of an indemnity reasonably satisfactory to Company in form and amount, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

17. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

18. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, 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 Holder hereof against impairment; provided, however, that notwithstanding the foregoing, nothing in this Warrant shall restrict or impair Company's right to effect changes to the rights, preferences, and privileges associated with the Warrant Shares with the requisite consent of the stockholders as may be required to amend its Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Warrant Shares in the same manner as the other holders of outstanding shares of the same class.

19. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 19.

If to Company: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

With a copy to: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: In-House Counsel

If to Holder: Oxford Finance LLC  
133 North Fairfax Street  
Alexandria, VA 22314  
Attention: Legal Department  
Facsimile: (703) 519-5225

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day), and if sent by facsimile transmission to the facsimile number provided in this Section 19, on the date of transmission, provided that the sender receives a machine-generated confirmation of successful transmission completed before 5:00 p.m. Pacific time (if on a business day, and if not, on the next business day).

20. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, (iii) in connection with strategic transactions for purposes other than capital raising, or (iv) the issuance of any shares of the Company's capital stock upon the exercise of any warrants outstanding as of the date hereof; (c) to effect any reclassification or recapitalization of any of its stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such information.

21. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

22. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Remainder of page intentionally blank; signature page follows]



IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized on the date specified above.

**CYTORI THERAPEUTICS INC.**

By: /s/ Mark E. Saad  
Name: Mark E. Saad  
Title: Chief Financial Officer

ACCEPTED AND AGREED TO:

**OXFORD FINANCE LLC**

By: /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President – Finance, Secretary  
& Treasure

*[Signature Page to Warrant]*

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EXHIBIT A  
NOTICE OF EXERCISE

To:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Common Stock (the "Common Stock") of Cytori Therapeutics Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated June 28, 2013 (the "Warrant").
2. Holder exercises its rights under the Warrant as set forth below (check one):  

Holder elects to purchase \_\_\_\_\_ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$\_\_\_\_\_ as payment of the purchase price.

Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer I.D.: \_\_\_\_\_

[NAME OF HOLDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

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EXHIBIT B

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [ASSIGNEE]

Address:

Tax ID:

that certain Warrant to Purchase Shares of Common Stock issued by Cytori Therapeutics Inc. (the "Company"), on June 28, 2013 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By:  
Name:  
Title:

Date:

By its execution below, and for the benefit of the Company, [ASSIGNEE] makes each of the representations and warranties set forth in Section 4(a) of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[ASSIGNEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 115,997 SHARES OF COMMON STOCK

Warrant No. CSW-13-003

June 28, 2013

**THIS CERTIFIES THAT**, for value received, Oxford Finance LLC (“Holder”) is entitled to subscribe for and purchase 115,997 shares of fully paid and nonassessable Common Stock of Cytori Therapeutics Inc., a Delaware corporation (the “Company”), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term “Common Stock” shall mean Company’s presently authorized common stock, \$0.001 par value per share, and any stock into which such common stock may hereafter be converted or exchanged and the term “Warrant Shares” shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

This Warrant is issued pursuant to that certain Loan and Security Agreement, dated as of June 28, 2013, by and among Company, the other entities or persons signatory thereto as loan parties, Oxford Finance LLC, a Delaware limited liability company, as agent and lender, and the other financial institutions signatory thereto from time to time as lenders.

1. Warrant Price. The “Warrant Price” shall initially be Two dollars and Twenty-Six cents (\$2.26) per share, subject to adjustment as provided in Section 7 below.

2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the seventh anniversary of the date of this Warrant (the “Expiration Date”).

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company (as set forth in Section 19 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company’s expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.

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(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

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

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of the Wall Street Journal for the ten (10) trading days prior to the date of determination of Fair Market Value; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the per share Fair Market Value for the Common Stock shall be the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined by the Board of Directors; or

(iii) In any other instance, the per share Fair Market Value for the Common Stock shall be as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of 3(c)(ii) or 3(c)(iii), above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certification must be made to Holder at least ten (10) business days prior to the proposed effective date of the merger, consolidation, sale, or other triggering event as defined in 3(c)(ii) or 3(c)(iii).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

(ii) Cash Acquisition. In the event of an Acquisition in which the sole consideration is cash, Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to expire automatically upon the consummation of such Acquisition. Company shall provide Holder with written notice of any proposed Acquisition together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale. Company shall provide Holder with written notice of any proposed asset sale together with such reasonable information as Holder may request in connection with such asset sale giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed asset sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than those particularly described in subsections (ii) and (iii) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Warrant Shares shall be adjusted accordingly.

(v) Early Termination of Warrant in Certain Other Circumstances. Notwithstanding the foregoing provisions of Section 3(e)(iv), but subject to the terms of Section 3(d), in the event that the acquiror in an Acquisition does not agree to assume this Warrant at and as of the closing of such Acquisition, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following the closing of such Acquisition if all of the following conditions are met: (A) the acquiror is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (B) the class of stock or other security of the acquiror that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, and (C) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquiror stock and/or other securities that would be received by Holder in respect of each Warrant Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the "Securities") for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder does not presently have any agreement, plan or understanding, directly or indirectly, with any person to distribute or effect the distribution of any of the Securities to or through any person. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the "Act") by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity, if it so requested, to discuss Company's business, management and financial affairs with its management and an opportunity to review Company's facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company's business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing in its jurisdiction of incorporation; (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.



(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation or this Warrant. Assuming the truth and accuracy of Holder's representations and warranties set forth in Section 4(a), no registration under the Act is required for the offer and sale of this Warrant or the issuance of the Warrant Shares, pursuant to the terms of this Warrant and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2012 (such reports are collectively referred to herein as the "Company Reports"). The Company Reports constitute all of the documents required to be filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC from December 31, 2012 through the date of this Warrant. The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of their respective dates of filing with the SEC, the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. Legends.

- (a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

- (b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Condition of Transfer or Exercise of Warrant.

(a) It shall be a condition to any transfer or exercise of this Warrant that at the time of such transfer or exercise, Holder shall provide Company with a representation in writing that Holder or transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, or will provide Company with a statement of pertinent facts covering any proposed distribution; provided, that in the case of a transfer of this Warrant, such requirement shall be deemed satisfied by the execution and delivery to the Company by Holder and the transferee of an Assignment in substantially the form attached hereto as Exhibit B. As a further condition to any transfer of this Warrant or any or all of the shares of Common Stock issuable upon exercise of this Warrant, other than a transfer registered under the Act, Company may request a legal opinion, in form and substance satisfactory to Company and its counsel, reciting the pertinent circumstances surrounding the proposed transfer and stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act. Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" within the meaning of Regulation D under the Act. Furthermore, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act, unless an opinion of counsel is required by the Company's transfer agent to effect such transfer. As further condition to each transfer, at the request of Company, Holder shall surrender this Warrant to Company and the transferee shall receive and accept a Warrant, of like tenor and date, executed by Company.

(b) Notwithstanding anything to the contrary herein (including but not limited to the provisions of subsection (a) above and Section 10 below), after receipt by Oxford Finance LLC ("Oxford") of this executed Warrant, Oxford may transfer this Warrant to an Affiliate of Oxford (as the term Affiliate is defined under the Securities Act of 1933, as amended) without notifying the Company. In the event of such transfer, by accepting transfer of this Warrant and as a condition to the effectiveness of such transfer, such Affiliate of Oxford shall be deemed to have made to Company the representations and warranties set forth in Section 4(a) hereof.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, subject to the provisions of Section 3(e) hereof, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price pursuant to clause (i) of Section 7(c), the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 19 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 45 days of each fiscal quarter end, in a form acceptable to Holder and certified by Company's president or chief financial officer, and (b) annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and reasonably satisfactory to Holder within 120 days of the fiscal year end or, if sooner, promptly after such time as Company's Board of Directors receives the audit; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such reports.

10. Transferability of Warrant. This Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with Section 6 and applicable federal and state securities laws. Company shall issue and deliver to the transferee a new Warrant representing the Warrant so transferred. Upon any partial transfer, Company will issue and deliver to Holder a new Warrant with respect to the portion of the Warrant not so transferred.

11. **Reserved.**

12. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

13. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

14. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

15. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

16. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, on delivery of an indemnity reasonably satisfactory to Company in form and amount, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

17. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

18. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, 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 Holder hereof against impairment; provided, however, that notwithstanding the foregoing, nothing in this Warrant shall restrict or impair Company's right to effect changes to the rights, preferences, and privileges associated with the Warrant Shares with the requisite consent of the stockholders as may be required to amend its Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Warrant Shares in the same manner as the other holders of outstanding shares of the same class.

19. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 19.

If to Company: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

With a copy to: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: In-House Counsel

If to Holder: Oxford Finance LLC  
133 North Fairfax Street  
Alexandria, VA 22314  
Attention: Legal Department  
Facsimile: (703) 519-5225

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day), and if sent by facsimile transmission to the facsimile number provided in this Section 19, on the date of transmission, provided that the sender receives a machine-generated confirmation of successful transmission completed before 5:00 p.m. Pacific time (if on a business day, and if not, on the next business day).

20. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, (iii) in connection with strategic transactions for purposes other than capital raising, or (iv) the issuance of any shares of the Company's capital stock upon the exercise of any warrants outstanding as of the date hereof; (c) to effect any reclassification or recapitalization of any of its stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such information.

21. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

22. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Remainder of page intentionally blank; signature page follows]



IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized on the date specified above.

**CYTORI THERAPEUTICS INC.**

By: /s/ Mark E. Saad  
Name: Mark E. Saad  
Title: Chief Financial Officer

ACCEPTED AND AGREED TO:

**OXFORD FINANCE LLC**

By: /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President – Finance, Secretary  
& Treasure

*[Signature Page to Warrant]*

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EXHIBIT A  
NOTICE OF EXERCISE

To:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Common Stock (the "Common Stock") of Cytori Therapeutics Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated June 28, 2013 (the "Warrant").
  
2. Holder exercises its rights under the Warrant as set forth below (check one):  
  

Holder elects to purchase \_\_\_\_\_ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$\_\_\_\_\_ as payment of the purchase price.

Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
  
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer I.D.: \_\_\_\_\_

[NAME OF HOLDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

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EXHIBIT B

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [ASSIGNEE]

Address:

Tax ID:

that certain Warrant to Purchase Shares of Common Stock issued by Cytori Therapeutics Inc. (the "Company"), on June 28, 2013 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By:

Name:

Title:

Date:

By its execution below, and for the benefit of the Company, [ASSIGNEE] makes each of the representations and warranties set forth in Section 4(a) of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[ASSIGNEE]

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

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NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 92,797 SHARES OF COMMON STOCK

Warrant No. CSW-13-004

June 28, 2013

THIS CERTIFIES THAT, for value received, Oxford Finance LLC ("Holder") is entitled to subscribe for and purchase 92,797 shares of fully paid and nonassessable Common Stock of Cytori Therapeutics Inc., a Delaware corporation (the "Company"), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term "Common Stock" shall mean Company's presently authorized common stock, \$0.001 par value per share, and any stock into which such common stock may hereafter be converted or exchanged and the term "Warrant Shares" shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

This Warrant is issued pursuant to that certain Loan and Security Agreement, dated as of June 28, 2013, by and among Company, the other entities or persons signatory thereto as loan parties, Oxford Finance LLC, a Delaware limited liability company, as agent and lender, and the other financial institutions signatory thereto from time to time as lenders.

1. Warrant Price. The "Warrant Price" shall initially be Two dollars and Twenty-Six cents (\$2.26) per share, subject to adjustment as provided in Section 7 below.

2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the seventh anniversary of the date of this Warrant (the "Expiration Date").

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company (as set forth in Section 19 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.

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(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

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

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of the Wall Street Journal for the ten (10) trading days prior to the date of determination of Fair Market Value; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the per share Fair Market Value for the Common Stock shall be the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined by the Board of Directors; or

(iii) In any other instance, the per share Fair Market Value for the Common Stock shall be as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of 3(c)(ii) or 3(c)(iii), above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certification must be made to Holder at least ten (10) business days prior to the proposed effective date of the merger, consolidation, sale, or other triggering event as defined in 3(c)(ii) or 3(c)(iii).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

(ii) Cash Acquisition. In the event of an Acquisition in which the sole consideration is cash, Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to expire automatically upon the consummation of such Acquisition. Company shall provide Holder with written notice of any proposed Acquisition together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale. Company shall provide Holder with written notice of any proposed asset sale together with such reasonable information as Holder may request in connection with such asset sale giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed asset sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than those particularly described in subsections (ii) and (iii) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Warrant Shares shall be adjusted accordingly.

(v) Early Termination of Warrant in Certain Other Circumstances. Notwithstanding the foregoing provisions of Section 3(e)(iv), but subject to the terms of Section 3(d), in the event that the acquiror in an Acquisition does not agree to assume this Warrant at and as of the closing of such Acquisition, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following the closing of such Acquisition if all of the following conditions are met: (A) the acquiror is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (B) the class of stock or other security of the acquiror that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, and (C) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquiror stock and/or other securities that would be received by Holder in respect of each Warrant Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the “Securities”) for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder does not presently have any agreement, plan or understanding, directly or indirectly, with any person to distribute or effect the distribution of any of the Securities to or through any person. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the “Act”) by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity, if it so requested, to discuss Company’s business, management and financial affairs with its management and an opportunity to review Company’s facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company’s business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing in its jurisdiction of incorporation; (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.



(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation or this Warrant. Assuming the truth and accuracy of Holder's representations and warranties set forth in Section 4(a), no registration under the Act is required for the offer and sale of this Warrant or the issuance of the Warrant Shares, pursuant to the terms of this Warrant and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2012 (such reports are collectively referred to herein as the "Company Reports"). The Company Reports constitute all of the documents required to be filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC from December 31, 2012 through the date of this Warrant. The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of their respective dates of filing with the SEC, the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. Legends.

- (a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

- (b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Condition of Transfer or Exercise of Warrant.

(a) It shall be a condition to any transfer or exercise of this Warrant that at the time of such transfer or exercise, Holder shall provide Company with a representation in writing that Holder or transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, or will provide Company with a statement of pertinent facts covering any proposed distribution; provided, that in the case of a transfer of this Warrant, such requirement shall be deemed satisfied by the execution and delivery to the Company by Holder and the transferee of an Assignment in substantially the form attached hereto as Exhibit B. As a further condition to any transfer of this Warrant or any or all of the shares of Common Stock issuable upon exercise of this Warrant, other than a transfer registered under the Act, Company may request a legal opinion, in form and substance satisfactory to Company and its counsel, reciting the pertinent circumstances surrounding the proposed transfer and stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act. Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an “accredited investor” within the meaning of Regulation D under the Act. Furthermore, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act, unless an opinion of counsel is required by the Company’s transfer agent to effect such transfer. As further condition to each transfer, at the request of Company, Holder shall surrender this Warrant to Company and the transferee shall receive and accept a Warrant, of like tenor and date, executed by Company.

(b) Notwithstanding anything to the contrary herein (including but not limited to the provisions of subsection (a) above and Section 10 below), after receipt by Oxford Finance LLC (“Oxford”) of this executed Warrant, Oxford may transfer this Warrant to an Affiliate of Oxford (as the term Affiliate is defined under the Securities Act of 1933, as amended) without notifying the Company. In the event of such transfer, by accepting transfer of this Warrant and as a condition to the effectiveness of such transfer, such Affiliate of Oxford shall be deemed to have made to Company the representations and warranties set forth in Section 4(a) hereof.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, subject to the provisions of Section 3(e) hereof, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price pursuant to clause (i) of Section 7(c), the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 19 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 45 days of each fiscal quarter end, in a form acceptable to Holder and certified by Company's president or chief financial officer, and (b) annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and reasonably satisfactory to Holder within 120 days of the fiscal year end or, if sooner, promptly after such time as Company's Board of Directors receives the audit; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such reports.

10. Transferability of Warrant. This Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with Section 6 and applicable federal and state securities laws. Company shall issue and deliver to the transferee a new Warrant representing the Warrant so transferred. Upon any partial transfer, Company will issue and deliver to Holder a new Warrant with respect to the portion of the Warrant not so transferred.

11. **Reserved.**

12. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

13. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

14. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

15. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

16. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, on delivery of an indemnity reasonably satisfactory to Company in form and amount, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

17. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

18. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, 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 Holder hereof against impairment; provided, however, that notwithstanding the foregoing, nothing in this Warrant shall restrict or impair Company's right to effect changes to the rights, preferences, and privileges associated with the Warrant Shares with the requisite consent of the stockholders as may be required to amend its Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Warrant Shares in the same manner as the other holders of outstanding shares of the same class.

19. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 19.

If to Company:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

With a copy to:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: In-House Counsel

If to Holder:

Oxford Finance LLC  
133 North Fairfax Street  
Alexandria, VA 22314  
Attention: Legal Department  
Facsimile: (703) 519-5225

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day), and if sent by facsimile transmission to the facsimile number provided in this Section 19, on the date of transmission, provided that the sender receives a machine-generated confirmation of successful transmission completed before 5:00 p.m. Pacific time (if on a business day, and if not, on the next business day).

20. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, (iii) in connection with strategic transactions for purposes other than capital raising, or (iv) the issuance of any shares of the Company's capital stock upon the exercise of any warrants outstanding as of the date hereof; (c) to effect any reclassification or recapitalization of any of its stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such information.

21. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

22. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Remainder of page intentionally blank; signature page follows]



IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized on the date specified above.

**CYTORI THERAPEUTICS INC.**

By: /s/ Mark E. Saad

Name: Mark E. Saad

Title: Chief Financial Officer

ACCEPTED AND AGREED TO:

**OXFORD FINANCE LLC**

By: /s/ Mark Davis

Name: Mark Davis

Title: Vice President – Finance, Secretary  
& Treasure

*[Signature Page to Warrant]*

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EXHIBIT A  
NOTICE OF EXERCISE

To:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Common Stock (the "Common Stock") of Cytori Therapeutics Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated June 28, 2013 (the "Warrant").
  
2. Holder exercises its rights under the Warrant as set forth below (check one):  

Holder elects to purchase \_\_\_\_\_ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$ \_\_\_\_\_ as payment of the purchase price.

Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
  
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Taxpayer I.D.: \_\_\_\_\_

[NAME OF HOLDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

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EXHIBIT B

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [ASSIGNEE]

Address:

Tax ID:

that certain Warrant to Purchase Shares of Common Stock issued by Cytori Therapeutics Inc. (the "Company"), on June 28, 2013 (the "Warrant") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By:  
Name:  
Title:

Date:

By its execution below, and for the benefit of the Company, [ASSIGNEE] makes each of the representations and warranties set forth in Section 4(a) of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[ASSIGNEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 39,770 SHARES OF COMMON STOCK

Warrant No. CSW-13-005

June 28, 2013

THIS CERTIFIES THAT, for value received, Silicon Valley Bank ("Holder") is entitled to subscribe for and purchase 39,770 shares of fully paid and nonassessable Common Stock of Cytori Therapeutics Inc., a Delaware corporation (the "Company"), at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term "Common Stock" shall mean Company's presently authorized common stock, \$0.001 par value per share, and any stock into which such common stock may hereafter be converted or exchanged and the term "Warrant Shares" shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

This Warrant is issued pursuant to that certain Loan and Security Agreement, dated as of June 28, 2013, by and among Company, the other entities or persons signatory thereto as loan parties, Oxford Finance LLC, a Delaware limited liability company, as agent and lender, and the other financial institutions signatory thereto from time to time as lenders.

1. Warrant Price. The "Warrant Price" shall initially be Two dollars and Twenty-Six cents (\$2.26) per share, subject to adjustment as provided in Section 7 below.
  2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. Pacific time on the seventh anniversary of the date of this Warrant (the "Expiration Date").
  3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.
    - (a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company (as set forth in Section 19 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.
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(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto as Exhibit A) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

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

Y = the number of Warrant Shares purchasable under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of the Wall Street Journal for the ten (10) trading days prior to the date of determination of Fair Market Value; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the per share Fair Market Value for the Common Stock shall be the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined by the Board of Directors; or

(iii) In any other instance, the per share Fair Market Value for the Common Stock shall be as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of 3(c)(ii) or 3(c)(iii), above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certification must be made to Holder at least ten (10) business days prior to the proposed effective date of the merger, consolidation, sale, or other triggering event as defined in 3(c)(ii) or 3(c)(iii).

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant, "Acquisition" means any sale, exclusive license, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity after the transaction. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

(ii) Cash Acquisition. In the event of an Acquisition in which the sole consideration is cash, Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to expire automatically upon the consummation of such Acquisition. Company shall provide Holder with written notice of any proposed Acquisition together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale. Company shall provide Holder with written notice of any proposed asset sale together with such reasonable information as Holder may request in connection with such asset sale giving rise to such notice, which is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed asset sale.

(vi) Assumption of Warrant. Upon the closing of any Acquisition other than those particularly described in subsections (ii) and (iii) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Warrant Shares shall be adjusted accordingly.

(v) Early Termination of Warrant in Certain Other Circumstances. Notwithstanding the foregoing provisions of Section 3(e)(iv), but subject to the terms of Section 3(d), in the event that the acquiror in an Acquisition does not agree to assume this Warrant at and as of the closing of such Acquisition, this Warrant, to the extent not exercised or converted on or prior to such closing, shall terminate and be of no further force or effect as of immediately following the closing of such Acquisition if all of the following conditions are met: (A) the acquiror is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (B) the class of stock or other security of the acquiror that would be received by Holder in connection with such Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is listed for trading on a national securities exchange or approved for quotation on an automated inter-dealer quotation system, and (C) the value (determined as of the closing of such Acquisition in accordance with the definitive agreements therefor) of the acquiror stock and/or other securities that would be received by Holder in respect of each Warrant Share were Holder to exercise or convert this Warrant on or prior to the closing of such Acquisition is equal to or greater than three (3) times the then-effective Warrant Price.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the “Securities”) for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder does not presently have any agreement, plan or understanding, directly or indirectly, with any person to distribute or effect the distribution of any of the Securities to or through any person. Holder understands that the Securities have not been registered under the Securities Act of 1933, as amended (the “Act”) by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity, if it so requested, to discuss Company’s business, management and financial affairs with its management and an opportunity to review Company’s facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company’s business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing in its jurisdiction of incorporation; (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.



(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation or this Warrant. Assuming the truth and accuracy of Holder's representations and warranties set forth in Section 4(a), no registration under the Act is required for the offer and sale of this Warrant or the issuance of the Warrant Shares, pursuant to the terms of this Warrant and neither Company nor any authorized agent acting on its behalf has or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Reports. Company has previously furnished or made available to Holder complete and accurate copies, as amended or supplemented, of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC"), and (b) all other reports filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") with the SEC since December 31, 2012 (such reports are collectively referred to herein as the "Company Reports"). The Company Reports constitute all of the documents required to be filed by Company under Section 13 or subsections (a) or (c) of Section 14 of the Exchange Act with the SEC from December 31, 2012 through the date of this Warrant. The Company Reports complied in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder when filed. As of their respective dates of filing with the SEC, the Company Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

5. Legends.

- (a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES AND EXCHANGE COMMISSION, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

- (b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the SEC reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Condition of Transfer or Exercise of Warrant.

(a) It shall be a condition to any transfer or exercise of this Warrant that at the time of such transfer or exercise, Holder shall provide Company with a representation in writing that Holder or transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, or will provide Company with a statement of pertinent facts covering any proposed distribution; provided, that in the case of a transfer of this Warrant, such requirement shall be deemed satisfied by the execution and delivery to the Company by Holder and the transferee of an Assignment in substantially the form attached hereto as Exhibit B. As a further condition to any transfer of this Warrant or any or all of the shares of Common Stock issuable upon exercise of this Warrant, other than a transfer registered under the Act, Company may request a legal opinion, in form and substance satisfactory to Company and its counsel, reciting the pertinent circumstances surrounding the proposed transfer and stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act. Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an “accredited investor” within the meaning of Regulation D under the Act. Furthermore, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act, unless an opinion of counsel is required by the Company’s transfer agent to effect such transfer. As further condition to each transfer, at the request of Company, Holder shall surrender this Warrant to Company and the transferee shall receive and accept a Warrant, of like tenor and date, executed by Company.

(b) Notwithstanding anything to the contrary herein, after receipt by Silicon Valley Bank (“Bank”) of this executed Warrant, Bank will transfer all of this Warrant to SVB Financial Group, an Affiliate of Bank (as the term Affiliate is defined under the Securities Act of 1933, as amended). By accepting transfer of this Warrant and as a condition to the effectiveness of such transfer, SVB Financial Group shall be deemed to have made to Company the representations and warranties set forth in Section 4(a) hereof.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, subject to the provisions of Section 3(e) hereof, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price pursuant to clause (i) of Section 7(c), the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and shall cause copies of such certificate to be mailed (by certified or registered mail, return receipt required, postage prepaid) within thirty (30) days of such adjustment to Holder as set forth in Section 19 hereof.

9. Financial and Other Reports. If at any time prior to the earlier of the Expiration Date and the complete exercise of this Warrant, Company is no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, Company shall furnish to Holder (a) quarterly unaudited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements within 45 days of each fiscal quarter end, in a form acceptable to Holder and certified by Company's president or chief financial officer, and (b) annual audited consolidated and, if available, consolidating balance sheets, statements of operations and cash flow statements certified by an independent certified public accountant selected by Company and reasonably satisfactory to Holder within 120 days of the fiscal year end or, if sooner, promptly after such time as Company's Board of Directors receives the audit; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such reports.

10. Transferability of Warrant. This Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with Section 6 and applicable federal and state securities laws. Company shall issue and deliver to the transferee a new Warrant representing the Warrant so transferred. Upon any partial transfer, Company will issue and deliver to Holder a new Warrant with respect to the portion of the Warrant not so transferred.

11. **Reserved.**

12. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

13. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

14. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

15. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

16. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, on delivery of an indemnity reasonably satisfactory to Company in form and amount, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

17. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

(e) Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

18. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, 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 Holder hereof against impairment; provided, however, that notwithstanding the foregoing, nothing in this Warrant shall restrict or impair Company's right to effect changes to the rights, preferences, and privileges associated with the Warrant Shares with the requisite consent of the stockholders as may be required to amend its Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Warrant Shares in the same manner as the other holders of outstanding shares of the same class.

19. Addresses. Any notice required or permitted hereunder shall be in writing and shall be mailed by overnight courier, registered or certified mail, return receipt requested, and postage prepaid, or otherwise delivered by hand or by messenger, addressed as set forth below, or at such other address as Company or Holder hereof shall have furnished to the other party in accordance with the delivery instructions set forth in this Section 19.

If to Company: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

With a copy to: Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: In-House Counsel

If to Holder: Silicon Valley Bank  
4370 La Jolla Village Drive  
Suite 1050  
San Diego, CA 92122  
Attn: Kevin Wallace

If mailed by registered or certified mail, return receipt requested, and postage prepaid, notice shall be deemed to be given five (5) days after being sent, and if sent by overnight courier, by hand or by messenger, notice shall be deemed to be given when delivered (if on a business day, and if not, on the next business day), and if sent by facsimile transmission to the facsimile number provided in this Section 19, on the date of transmission, provided that the sender receives a machine-generated confirmation of successful transmission completed before 5:00 p.m. Pacific time (if on a business day, and if not, on the next business day).

20. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any shares of the Company's capital stock (or other securities convertible into such capital stock), other than (i) pursuant to the Company's stock option or other compensatory plans, (ii) in connection with commercial credit arrangements or equipment financings, (iii) in connection with strategic transactions for purposes other than capital raising, or (iv) the issuance of any shares of the Company's capital stock upon the exercise of any warrants outstanding as of the date hereof; (c) to effect any reclassification or recapitalization of any of its stock; or (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). Company will also provide information requested by Holder reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements; provided, however, that Holder execute and deliver to Company a nondisclosure agreement in a form reasonably acceptable to Company prior to receipt of any such information.

21. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

22. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Remainder of page intentionally blank; signature page follows]



IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized on the date specified above.

**CYTORI THERAPEUTICS INC.**

By: /s/ Mark E. Saad  
Name: Mark E. Saad  
Title: Chief Financial Officer

ACCEPTED AND AGREED TO:

**SILICON VALLEY BANK**

By: /s/ Kevin Wallace  
Name: Kevin Wallace  
Title: Vice President

EXHIBIT A  
NOTICE OF EXERCISE

To:

Cytori Therapeutics Inc.  
3020 Callan Road  
San Diego, California 92121  
Phone: (858) 458-0900  
Facsimile: (858) 450-4335  
Attn: Chief Financial Officer

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Common Stock (the "Common Stock") of Cytori Therapeutics Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated June 28, 2013 (the "Warrant").
  
2. Holder exercises its rights under the Warrant as set forth below (check one):  
  
      (     )     Holder elects to purchase \_\_\_\_\_ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$\_\_\_\_\_ as payment of the purchase price.  
  
      (     )     Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
  
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and that Holder has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Taxpayer I.D.: \_\_\_\_\_

[NAME OF HOLDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

EXHIBIT B

ASSIGNMENT

For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

Name: [ASSIGNEE]

Address:

Tax ID:

that certain Warrant to Purchase Shares of Common Stock issued by Cytori Therapeutics Inc. (the "Company"), on June 28, 2013 (the "Warrant") together with all rights, title and interest therein.

SILICON VALLEY BANK

By:  
Name:  
Title:

Date:

By its execution below, and for the benefit of the Company, [ASSIGNEE] makes each of the representations and warranties set forth in Section 4(a) of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[ASSIGNEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Certification of Principal Executive Officer Pursuant to  
Securities Exchange Act Rule 13a-14(a),  
as Adopted Pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Christopher J. Calhoun, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cytori Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report- based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2013

/s/ Christopher J. Calhoun

Christopher J. Calhoun,  
Chief Executive Officer

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**Certification of Principal Financial Officer Pursuant to  
Securities Exchange Act Rule 13a-14(a),  
as Adopted Pursuant to  
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Mark E. Saad, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cytori Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report- based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2013

/s/ Mark E. Saad

Mark E. Saad

Chief Financial Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350/ SECURITIES EXCHANGE ACT RULE 13a-14(b), AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Cytori Therapeutics, Inc. for the quarterly period ended June 30, 2013 as filed with the Securities and Exchange Commission on the date hereof, Christopher J. Calhoun, as Chief Executive Officer of Cytori Therapeutics, Inc., and Mark E. Saad, as Chief Financial Officer of Cytori Therapeutics, Inc., each hereby certifies, respectively, that:

1. The Form 10-Q report of Cytori Therapeutics, Inc. that this certification accompanies fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934.
2. The information contained in the Form 10-Q report of Cytori Therapeutics, Inc. that this certification accompanies fairly presents, in all material respects, the financial condition and results of operations of Cytori Therapeutics, Inc.

Dated: August 9, 2013

By: /s/ Christopher J. Calhoun  
Christopher J. Calhoun  
*Chief Executive Officer*

Dated: August 9, 2013

By: /s/ Mark E. Saad  
Mark E. Saad  
*Chief Financial Officer*

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