UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2016

OR

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

For the transition period from to

Commission file number 001-34375

CYTORI THERAPEUTICS, INC.

(Exact name of Registrant as Specified in Its Charter)

DELAWARE	**33-0827593**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
3020 CALLAN ROAD, SAN DIEGO, CALIFORNIA	**92121**
(Address of principal executive offices)	**(Zip Code)**

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common stock, par value $0.001	**NASDAQ Stock Market LLC**

Securities registered pursuant to Section 12(g) of the Act:
Preferred Stock Purchase Rights

Indicate by check mark if the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☒

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

The aggregate market value of the common stock of the registrant held by non-affiliates of the registrant on June 30, 2016, the last business day of the registrant's most recently completed second fiscal quarter, was $42.3 million based on the closing sales price of the registrant's common stock on June 30, 2016 as reported on the Nasdaq Capital Market, of $2.09 per share.

As of January 31, 2017, there were 21,966,424 shares of the registrant's common stock outstanding.

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PART I

Item 1. Business

References to "Cytori," "we," "us" and "our" refer to Cytori Therapeutics, Inc. and its consolidated subsidiaries. References to "Notes" refer to the Notes to Consolidated Financial Statements included herein (refer to Item 8).

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This report contains certain statements that may be deemed "forward-looking statements" within the meaning of U.S. 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 research and development, sales and marketing, 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 or development revenues and the sources of such revenues; our ability to effectively manage our gross profit margins; our ability to obtain regulatory approvals; expectations as to our future performance; portions of 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: the early stage of our product candidates and therapies, the results of our research and development activities, including uncertainties relating to the clinical trials of our product candidates and therapies; our need and ability to raise additional cash; the outcome of our partnering/licensing efforts; 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 under the "Risk Factors" in Item 1A of Part I above, which we encourage you to read carefully

We encourage you to read the risks described under "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.

This Annual report on Form 10-K refers to trademarks such as Cytori Cell Therapy, Habeo Cell Therapy, Celution, Celase, Intravase, Puregraft and StemSource. Solely for convenience, our trademarks and tradenames referred to in this Form 10-K may appear without the ® or ™ symbols, but such references are not intended to indicate in any way that we will not assert, to the fullest extent under applicable law, our rights to these trademarks and tradenames.

General

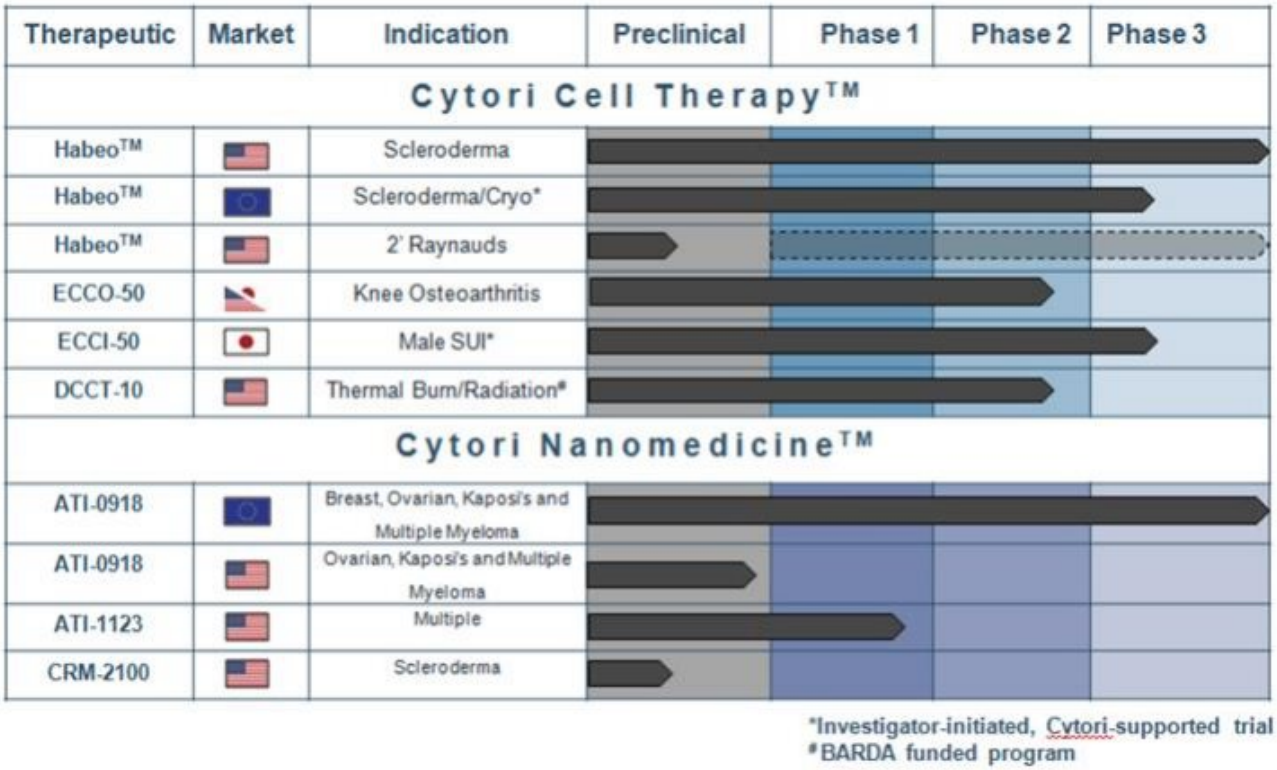
Our strategy is to build a profitable and growing specialty therapeutics company focused on rare and niche opportunities frequently overlooked by larger companies but requiring breadth of scope, expertise and focus often not possessed by or available to smaller companies. To meet this objective, we have, thus far, identified two therapeutic development platforms, discussed below, and candidate therapeutics in our pipeline that hold promise for millions of patients and significant market potential. Our current corporate activities fall substantially into one of two key areas related to our two therapeutic development platforms: Cytori Cell Therapy ™ and Cytori Nanomedicine ™ .

Our Cytori Cell Therapy, or CCT, platform, is based on the scientific discovery that the human adipose or fat tissue compartment is a source of a unique mixed population of stem, progenitor and regenerative cells that may hold substantial promise in the treatment of numerous diseases. To bring this promise to patients, we are developing the processes and procedures via proprietary hardware- and software-based devices and single-use reagents and consumable sets, to enable doctors to have access to a variety of therapies at the bedside derived fundamentally from each patient's own adipose tissue. Our lead product candidate is for the treatment of impaired hand function in scleroderma, and we have recently completed a U.S. pivotal clinical trial for this indication using our Habeo ™ Cell Therapy product. We have additional CCT treatments in various stages of development. Further, our CCT platform is the subject of investigator-initiated trials conducted by our partners, licensees and other third parties, some of which are supported by us and/or

funded by government agencies and other funding sources. Currently, we internally manufactur e or source our CCT-related products from third parties. We also have obtained regulatory approval to sell some of our CCT products, including our Celution devices and consumable kits, in certain markets outside the United States. In those markets, we have been able to further develop and improve our core technologies, gain expanded clinical experience and data and generate sales.

Our Cytori Nanomedicine platform features a versatile and novel protein-stabilized liposomal nanoparticle technology for drug encapsulation that has thus far provided the foundation to bring two promising drugs into early/late stage clinical trials. By encapsulating certain drugs, we can create both novel compounds and improve the performance via reformulated versions of existing drugs. Nanoparticle encapsulation is promising because it can help improve the trafficking and metabolism of many drugs, thus potentially enhancing the therapeutic profile and patient benefits. Our lead drug candidate, ATI-0918 is a generic version of liposomal encapsulated doxorubicin. Liposomal encapsulated doxorubicin is a heavily relied upon chemotherapeutic used in many cancer types on a global basis. We believe that data from a 60-patient European study of ATI-0918 has met the statistical criteria for bioequivalence to Caelyx®, the current reference listed drug in Europe. We intend that these bioequivalence data will serve as a basis for our planned regulatory submission to the European Medicines Agency, or EMA, for ATI-0918. Our second nanomedicine drug candidate is ATI-1123, a new chemical entity which is a nanoparticle-encapsulated form of docetaxel, also a standard chemotherapeutic drug used for many cancers. A phase I clinical trial of ATI-1123 has been completed, and we are investigating possible expansion of this trial to phase II, most likely in conjunction with a development partner. In addition, we are early in the long-term research and development of encapsulated regenerative medicine drugs, focused first on the treatment of scleroderma and related connective disorders. Finally, in connection with our acquisition of the ATI-0918 and ATI-1123 drug candidates, we have acquired know-how (including proprietary processes and techniques) and a scalable nanoparticle manufacturing plant in San Antonio, Texas from which we intend to test, validate and eventually manufacture commercial quantities of our nanoparticle drugs.

Development Pipeline



Cytori Cell Therapy

Our primary near-term goal is for Cytori Cell Therapy to be the first cell therapy to market for the treatment of impaired hand function in scleroderma, through Cytori-sponsored and supported clinical development efforts. The Cytori-sponsored **S** cleroderma **T** reatment with Celution Processed **A** dipose Derived **R** egenerative Cells, or STAR clinical trial, is a randomized, double-blind, placebo-controlled, Phase III pivotal clinical trial in the U.S. The purpose of the STAR trial is to evaluate the safety and efficacy of a single

administration of Habeo ™ Cell Therapy (formerly named ECCS-50) in patients with scleroderma affecting the hands and fingers. We initiated the first sites for our STAR trial in July 2015 and we completed final enrollment of 88 patients in June 2016. We anticipate obtaining 48-week follow-up data in mid-2017. Once the stud y is unblinded and data are available, subjects randomized to the placebo arm will be given the option of being treated within a crossover arm of the study.

With respect to the remainder of our current cellular therapeutics clinical pipeline:

- We completed our Phase II Celution Prepared **A** dipose Derived Regenerative **C** ells in the **T** reatment of **O** steo **A** rthritis of the Knee, or ACT-OA clinical trial, in June 2015. The 48-week analysis was performed as planned and the top-line data are described in the "Osteoarthritis" section below.

- In July 2015, a Japanese investigator-initiated study in men with stress urinary incontinence, or SUI, following prostatic surgery for prostate cancer or benign prostatic hypertrophy, called ADRESU, received approval to begin enrollment from the Japanese Ministry of Health, Labor and Welfare, or MHLW. In December 2016, we announced that the ADRESU trial had reached 50% enrollment. The Japan Agency for Medical Research and Development, or AMED, has provided partial funding for the ADRESU trial.

- We are developing a treatment for thermal burns under a contract from the Biomedical Advanced Research Development Authority, or BARDA, a division of the U.S. Department of Health and Human Services. We submitted an Investigational Device Exemption, or IDE, application to the U.S. Food and Drug Administration, or FDA, in the fourth quarter of 2016 for a pilot clinical study in thermal burn, and we expect FDA's final determination by mid-2017. If we receive FDA's approval of the IDE, we will then seek approval of the pilot clinical study from BARDA as study sponsor.

- We recently announced our intent to initiate clinical trials in secondary Raynaud's Phenomenon, or SRP. This decision was based upon the encouraging Raynaud's Condition Score data from the investigator-initiated, Phase I, open-label, 12-patient SCLERADEC I clinical trial assessing use of Cytori Cell Therapy in patients with impaired hand function due to systemic scleroderma.

In addition to our targeted therapeutic development, we have continued to commercialize our Cytori Cell Therapy technology under select medical device approvals, clearances and registrations to customers in Europe, Japan and other regions. These customers are a mix of research customers evaluating new therapeutic applications of Cytori Cell Therapy and commercial customers, including our licensing partners, distributors, and end user hospitals, clinics and physicians, that use our Celution cell processing system (as further described in " *Sales, Marketing and Service* " below) mostly for treatment of patients in private pay procedures. In Japan, our largest commercial market, we gained increased utilization of our products in the private pay marketplace in 2016 due to several factors, including increased clarity around the November 2014 Regenerative Medicine Law (implemented in November 2015 as it relates to regenerative medicine products like Cytori Cell Therapy) and we project that our sales and market presence in Japan will continue to grow in 2017. The sale of Celution systems, consumables and ancillary products contribute a margin that partially offsets our operating expenses and will continue to play a role in fostering familiarity within the medical community with our technology.

Habeo Cell Therapy for Impaired Hand Function in Scleroderma and Secondary Raynaud's Phenomenon

Scleroderma is a rare and chronic autoimmune disorder associated with fibrosis of the skin, and destructive changes in blood vessels and multiple organ systems as the result of a generalized overproduction of collagen. Scleroderma affects approximately 50,000 patients in the United States (women are affected four times more frequently than men) and is typically detected between the ages of 30 and 50. More than 90 percent of scleroderma patients have hand involvement that is typically progressive and can result in chronic pain, blood flow changes and severe dysfunction. A small number of treatments are occasionally used off-label for hand scleroderma but and they do little to modify disease progression or substantially improve symptoms. Treatment options are directed at protecting the hands from injury and detrimental environmental conditions as well as the use of vasodilators. When the disease is advanced, immunosuppressive and other medications may be used but are often accompanied by side effects.

The STAR trial is a 48-week, 19 site, randomized, double blind, placebo-controlled pivotal clinical trial of 88 patients in the U.S. for the treatment of impaired hand function in scleroderma. The trial evaluates the safety and efficacy of a single administration of Habeo Cell Therapy in patients with scleroderma affecting the hands and fingers. The STAR trial uses the Cochin Hand Function Scale, or CHFS, a validated measure of hand function, as the primary endpoint measured at 24 weeks and 48 weeks (approximately 6 and 12 months) after a single administration of Habeo Cell Therapy or placebo. Pending the 48 week results, patients in the placebo group will be eligible for crossover to the active arm of the trial after all patients have completed 48 weeks of follow-up. We anticipate study results in mid-2017. The STAR trial is predicated on a completed, investigator-initiated, 12-patient, open-label, Phase I pilot trial, termed SCLERADEC I, sponsored by Assistance Publique-Hôpitaux de Marseille, or AP-HM, in Marseille, France. The SCLERADEC I trial received partial support from Cytori. The six-month results were published in the Annals of the Rheumatic Diseases in May 2014 and demonstrated approximately a 50 percent improvement at six months across four important and validated

e ndpoints used to assess the clinical status in patients with scleroderma with impaired hand function. Two-year follow up data in the SCLERADEC I trial was presented at the Systemic Sclerosis World Congress in February 2016 and published in the journal *Curr ent Research in Translational Medicine* in November 2016 and demonstrated sustained improvement in the following four key endpoints: CHFS, SHAQ, RCS, and hand pain, as assessed by a standard visual analogue scale.

Further, on December 5, 2016, we released topline results for three-year follow-up data showing sustained benefits materially consistent with those shown in two-year data.

In 2014, Drs. Guy Magalon and Brigitte Granel, under the sponsorship of AP-HM, submitted a study for review for a follow-up randomized, double-blind, placebo-controlled trial in France using Cytori Cell Therapy, to be supported by us. The trial, named SCLERADEC II, received approval from the French government in April 2015. Enrollment of this trial commenced in October 2015 and is ongoing. Enrollment is expected to be completed in 2017, approximately one year later than originally projected, due to delays in French regulatory approvals of participating sites. Patients will be followed at six-month post-treatment and compared with placebo treated patients. Pending the six-month results patients in the placebo group will be eligible for crossover using Habeo cells stored at the time of the initial procedure. This crossover arm will open after all patients have completed six-month follow up. We anticipate study results in 2018, however, the trial timeline is controlled in full by the sponsoring institution.

In November 2016, the US FDA Office of Orphan Products Development granted Cytori an orphan drug designation for cryopreserved or centrally processed ECCS-50 (Habeo) for scleroderma.

In January 2017, we announced our intention to broaden our investigation of Habeo Cell Therapy beyond systemic scleroderma to include secondary Raynaud's Phenomenon, or SRP. This expansion of Cytori's research and development efforts is based upon: (i) the 36-month follow-up data from the SCLERADEC I trial, which reported a 90 percent reduction in the Raynaud's Condition Score, which assesses the frequency and severity of Raynaud's attacks experienced by patients with Raynaud's Phenomenon, or RP; (ii) earlier limited published data reporting an association between use of Habeo Cell Therapy and improvement in vascular architecture, hand color, and other direct and indirect indicators of vascular function, and (iii) our internal preclinical data regarding the potential role of Habeo Cell Therapy in the stabilization of the vascular endothelium, an important contributor to the vascular dysfunction found in patients with RP. SRP is a problem that affects millions of patients worldwide.

Osteoarthritis

Osteoarthritis is a disease of the entire joint involving the cartilage, joint lining, ligaments and underlying bone. The breakdown of tissue leads to pain, joint stiffness and reduced function. It is the most common form of arthritis and affects an estimated 13.9% of US adults over the age of 25, and 33.6% of U.S. adults over the age of 65. Current treatments include physical therapy, non-steroidal anti-inflammatory medications, viscosupplement injections, and total knee replacement. A substantial medical need exists as present medications have limited efficacy and joint replacement is a relatively definitive treatment for those with the most advanced disease.

ACT-OA, was a 94-patient, randomized, double-blind, placebo controlled study involving two doses of Cytori Cell Therapy, a low dose and a high dose, and was conducted over 48 weeks. The randomization was 1:1:1 between the control, low and high dose groups. The trial was completed in June 2015. The goal of this proof-of-concept trial was to help determine: (1) safety and feasibility of the ECCO-50 therapeutic for osteoarthritis, (2) provide dosing guidance and (3) explore key trial endpoints useful for a Phase III trial.

We completed top-line analysis of the final 48-week data in July 2016. A total of 94 patients were randomized (33 placebo, 30 low dose ECCO-50, 31 high dose ECCO-50). In general, a clear difference between low and high dose ECCO-50 was not observed and therefore the data for both groups have been combined. We evaluated numerous endpoints that can be summarized as follows:

- Intraarticular application of a single dose of ECCO-50 is feasible in an outpatient day-surgery setting; no serious adverse events were reported related to the fat harvest, cell injection or to the cell therapy.
- Consistent trends were observed in most secondary endpoints at 12, 24 and 48 weeks in the target knee of the treated group relative to placebo control group; 12-week primary endpoint of single pain on walking question did not achieve statistical significance.
- Consistent trends were observed in all six pre-specified MRI Osteoarthritis Knee Score (MOAKS) classification scores suggesting a lower degree of target knee joint pathological worsening at 48 weeks for the treated group relative to placebo control group. The differences against placebo favored ADRCs specifically in the number of bone marrow lesions, the percentage of the bone marrow lesion that is not a cyst, the size of the bone marrow lesions as a percentage of the total sub-region volume, percentage of full thickness cartilage loss, cartilage loss as a percentage of cartilage surface area and the size of the largest osteophyte.

In summary, the ACT-OA Phase II trial demonstrated feasibility of same day fat harvest ing, cell processing and intraarticular administration of autologous ADRCs (ECCO-50) with a potential for a beneficial effect of ECCO-50. The accumulated data and experienced gained will be critical in considering designs of further clinical trials in oste oarthritis and other potential indications. In addition, we are actively pursuing partnering and commercialization opportunities for ECCO-50 to further develop our knee osteoarthritis program and also to support our growing commercial sales into the knee osteoarthritis market in Japan.

Stress Urinary Incontinence

Another therapeutic target under evaluation by Cytori in combination with the University of Nagoya and the Japanese MHLW is stress urinary incontinence in men following surgical removal of the prostate gland, which is based on positive data reported in a peer reviewed journal resulting from the use of ADRCs prepared by our Celution System. The ADRESU trial is a 45 patient, investigator-initiated, open-label, multi-center, single arm trial that was approved by the Japanese MHLW in July 2015 and is being led by both Momokazu Gotoh, MD, Ph.D., Professor and Chairman of the Department of Urology and Tokunori Yamamoto, MD, Ph.D., Associate Professor Department of Urology at University of Nagoya Graduate School of Medicine. Trial enrollment began in September 2015, and in December 2016, the trial achieved 50% enrollment. This clinical trial is primarily sponsored and funded by the Japanese government, including a grant provided by AMED.

Cutaneous and Soft Tissue Thermal and Radiation Injuries

We are also developing Cytori Cell Therapy, or DCCT-10, for the treatment of thermal burns. In the third quarter of 2012, we were awarded a contract by BARDA valued at up to $106 million to develop a medical countermeasure for thermal burns. The total award under the BARDA contract has been intended to support all clinical, preclinical, regulatory and technology development activities needed to complete the FDA approval process for use of DCCT-10 in thermal burn injury under a device-based PMA regulatory pathway and to provide preclinical data in burn complicated by radiation exposure.

Pursuant to this contract, BARDA initially awarded us approximately $4.7 million over the initial two-year base period to fund preclinical research and continued development of our Celution System to improve cell processing. In August 2014, BARDA determined that Cytori had completed the objectives of the initial phase of the contract, and exercised its first contract option in the amount of approximately $12 million. In December 2014 and September 2016, BARDA exercised additional contract options pursuant to which it provided us with $2.0 million and $2.5 million in supplemental funds, respectively. These additional funds supported continuation of our research, regulatory, clinical and other activities required for submission of an IDE request to the FDA for RELIEF, a pilot clinical trial using DCCT-10 for the treatment of thermal burns. We submitted our IDE application to the FDA in the fourth quarter of 2016. Upon receipt of IDE approval, if granted, we anticipate that BARDA will provide funding to cover costs associated with execution of the clinical trial and related activities.

The latest BARDA contract modification, entered into in September 2016, is scheduled to terminate in April 2017, but is subject to a no-cost extension at our request and subject to BARDA's approval. We are in active negotiations with BARDA regarding entry into a new contract or contract option, which, if executed, would provide funding for the proposed RELIEF pilot trial and related costs and expenses.

Other recent developments for Cytori Cell Therapy

- In April 2016, the European Commission, acting on the positive recommendation from the European Medicines Agency Committee for Orphan Medicinal Products, issued orphan drug designation to a broad range of Cytori Cell Therapy formulations when used for the treatment of systemic sclerosis under Community Register of Orphan Medicinal Products number EU/3/16/1643.

- In February 2017, the U.S. FDA Division of Industry and Consumer Education, or DICE, granted us Small Business status for fiscal year 2017, thus entitling us to receive significant financial incentives, fee reductions, and fee waivers for selective FDA medical device regulatory filings. We anticipate that this grant of small business status will substantially reduce filing fees in 2017 for our planned pre-market authorization, or PMA, application for Habeo Cell Therapy, should the STAR Phase III data support filing of this application.

Cytori Nanomedicine

In February 2017, we completed our acquisition of substantially all of the assets of Azaya Therapeutics, Inc., or Azaya, pursuant to the terms of an Asset Purchase Agreement, dated January 26, 2017 by and between us and Azaya. Pursuant to the terms of the agreement, we acquired equipment, inventory, certain intellectual property including, a portfolio of investigational therapies and related assets, and assumed certain liabilities, from Azaya in exchange for the issuance of $2.0 million of shares of our common stock, assumption of

approximately $1.9 million in Azaya's trade payables and related charges, and the obligation to pay Azaya future milestones, earn-outs and licensing fees. The acquisition of Azaya brought two additional product candidates, ATI-0918 and ATI-1123, into the Cytori pipeline and we intend to develop and potentially commercialize both compounds.

ATI-0918 is a complex generic formulation of the market leading Doxil®/Caelyx®, which is a liposomal encapsulation of doxorubicin and approved for use in breast cancer, ovarian cancer, multiple myeloma, and Kaposi's Sarcoma. The current approval pathway for ATI-0918 is to demonstrate bioequivalence to Caelyx® for approval in the EU and to Lipodox® in the U.S. A study to demonstrate ATI-0918's bioequivalence to Caelyx®, for purposes of EMA approval, has been completed and we intend for these data to serve as the basis for our submission of a marketing authorization application for ATI-0918 to the EMA. We are also making plans to perform a bioequivalence study of ATI-0918 to the U.S. reference listed drug to serve as the basis for submission of an application for U.S. FDA approval. We currently anticipate that any U.S. bioequivalence trial for ATI-0918 would be funded by a development partner or licensee.

ATI-1123 is a liposomal formulation of docetaxel. Docetaxel is currently approved for non-small cell lung cancer, breast cancer, squamous cell carcinoma of the head and neck cancer, gastric adenocarcinoma, and hormone refractory prostate cancer. Its side effects include hair loss, bone marrow suppression, and allergic reactions. It is currently available as a generic drug. There is no form of docetaxel as a liposomal formulation. There is a protein (albumin) bound form of a similar chemotherapeutic drug, paclitaxel known as Abraxane®, which demonstrated some clinical advantages to paclitaxel. ATI-1123 has shown superiority to docetaxel in several animal models including some tumor types not amenable to treatment by docetaxel. A Phase I study of ATI-1123 has been completed in late stage refractory patients and has shown some activity in several tumor types (mostly stable disease). We are currently evaluating clinical scenarios to bring into Phase II studies in several indications.

Sales, Marketing and Service

Cytori Cell Therapy ™

We sell Celution cell processing systems, or Celution Systems, StemSource cell and tissue banking systems, or StemSource Systems, and surgical accessories and instrumentation to hospitals, clinics, physicians, researchers and other customers for commercial and research purposes, including performance of investigator-initiated studies. Our proprietary enzymatic reagents, which we market and sell under the brand names Celase® and Intravase®, are sold as part of our Celution Systems and StemSource Systems (with respect to Celase), or under certain circumstances, are sold separately.

We sell our Celution and StemSource Systems through a combination of a direct sales force, third-party distributors, independent sales representatives, and licensees. Our strategy is to grow and leverage our installed base of Celution and StemSource devices at cell processing facilities, clinics, hospitals and research labs to drive recurring sales of our proprietary disposables. To increase product familiarity and usage among current customers, we launch product enhancements, expand the approved indications for use, perform clinical and technical training, provide on-site case support, and facilitate facility-level licensing with regional and/or national regulatory bodies.

In Japan, we sell our products through our wholly owned subsidiary, Cytori Therapeutics, K.K., which has a direct sales capability. We currently intend to increase our direct sales personnel in Japan over time. In the Bahamas, Chile, Europe, South Korea, Russia and Vietnam, we sell our full product portfolio either directly to customers or through numerous third-party distributors. In the U.S., we are limited to selling only research reagents and surgical accessories and instrumentation directly to customers. Bimini Technologies, LLC, through its wholly owned subsidiary Kerastem Technologies, LLC, has a global exclusive license to sell our Celution cell processing systems for hair applications. Lorem Vascular has an exclusive license to sell our full product portfolio in all fields of use, excluding hair applications, in Australia, China, Hong Kong, Malaysia and Singapore.

In early 2016, we commenced the process of implementing a managed access program, or MAP, (also known as early access program or named patient program) for our Habeo Cell Therapy in conjunction with Idis Managed Access, part of Clinigen Group plc, or Idis, in select countries across Europe, the Middle East and Africa, or EMEA, for patients with impaired hand function due to scleroderma. Initially, we have focused on select countries within these regions and intend to expand our focus over time, depending on interest and participation in our MAP, our strategic focus, and other factors. Our MAP is intended to drive awareness of Habeo Cell Therapy in advance of anticipated commercial launch and also to provide useful pricing and clinical date. Though we have generated significant interest in the MAP, we have yet to treat a patient under it. We intend to continue to appropriately invest resources in our MAP.

As of December 31, 2016, we had three individuals in our global marketing team responsible for market assessments and business plans, competitive intelligence, distribution strategy, product management, social media and websites, forecasting, pricing and reimbursement, customer communication, relationship management and service. We create awareness of and demand for our products among physicians and researchers through digital advertising, e-marketing campaigns, and webinars, pre-clinical and clinical publications, patient advocacy group partnerships, sales collateral, and industry and medical society meetings.

As of December 31, 2016, we had three Cytori employees in our field service team responsible for providing Celution and StemSource installations, maintenance, training, troubleshooting, and hardware and software update/upgrade services to new and existing customers. This team also initiates and closes sites participating in Cytori-sponsored clinical trials.

For the year ended December 31, 2016, our sales were concentrated with respect to two distributors and three direct customers, which comprised 65% of our product revenue recognized. Two direct customers accounted for 57% of total outstanding accounts receivable (excluding receivables from BARDA) as of December 31, 2016.

Cytori Nanomedicine™

Our Cytori Nanomedicine pipeline includes both early and late stage nanomedicine product candidates, patented liposomal encapsulated docetaxel (ATI-1123) and generic liposomal encapsulated doxorubicin (ATI-0918), respectively. We are actively seeking regional and global partnerships with either pharmaceutical manufacturers or wholesale distributors for both of these product candidates, with priority on ATI-0918 in Europe where a generic form of liposomal doxorubicin is neither approved nor available.

Customers and Partners

In Japan, Europe, the Middle East, the Asia-Pacific region and Latin America, we offer our Cytori Systems and StemSource Systems through direct sales representatives, distributors and licensing partners, to hospitals, clinics and researchers, including for purposes of performing investigator-initiated and funded studies.

Pursuant to our Sale and Exclusive License/Supply Agreement, or Bimini Agreement, with Bimini, we granted Bimini a global exclusive license to our Cytori Cell Therapy devices and consumable products for hair applications excluding systemic or intravascular delivery of adipose-derived regenerative cells, or ADRCs. Bimini's current focus is on the aesthetics cash-pay market. Through Kerastem, its wholly owned subsidiary, Bimini is conducting an FDA-approved Phase II clinical trial in the United States, called STYLE, to study the safety and feasibility of Kerastem's solution for female and male pattern baldness. In September 2016, Bimini announced completion of its STYLE trial enrollment of 70 patients at four clinical trial sites within the United States. We anticipate that six- month follow-up data from this Phase II clinical trial will be available in mid-2017. Outside of the United States, Bimini is engaged in market development efforts in Europe and Japan for the hair market. The Kerastem Hair Therapy is CE mark approved in the EU for sales to patients with alopecia, or hair loss. Under the Bimini Agreement, Bimini is required, among other things, to pay an eight percent (8%) royalty on its net sales of our products for contemplated hair applications.

Pursuant to our Amended and Restated License/Supply Agreement, or Lorem Agreement, with Lorem Vascular Pte. Ltd., or Lorem Vascular, we granted Lorem Vascular an exclusive license in all fields of use (excluding hair applications subject to Bimini's license) to our Cytori Cell Therapy products for sale into China, Hong Kong, Malaysia, Singapore and Australia. Under the Lorem Agreement, Lorem Vascular committed to pay up to $500 million in license fees in the form of revenue milestones. In addition, Lorem Vascular is required to pay us 30% of their gross profits in China, Hong Kong and Malaysia for the term of the Lorem Agreement. Lorem Vascular has certain minimum product purchase obligations, including purchase obligations triggered by achievement of applicable regulatory clearance for our products in China, which regulatory clearance was achieved as of April 2015. Lorem Vascular has partially satisfied these related product purchase obligations, and as a result, we are currently in discussions with Lorem Vascular regarding restructuring of its obligations and our rights under the Lorem agreement. We cannot guarantee that our restructuring discussions with Lorem Vascular will be successful. Should we be unable to conclude these negotiations to our satisfaction, a dispute may ensue. See, also, our discussions of the regulatory landscape in China for our products as well as discussions regarding our relationship with Lorem Vascular in the "Risk Factors" section and in the "Competition" and "Governmental Regulation" sections of this "Business" section below.

Refer to Note 2 of the Notes to Consolidated Financial Statements for a discussion of geographical concentration of sales.

Manufacturing

Cytori Cell Therapy

We currently manufacture or source our Cytori Cell Therapy products at our headquarters in San Diego, California and in Wales, in the United Kingdom. We believe that our manufacturing capabilities will be sufficient to enable us to meet anticipated demand for these products in 2017. We are, and the manufacturer of any future therapeutic products would be, subject to periodic inspection by regulatory authorities and distribution partners. The manufacturer 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, such as our Notified Body in Europe and the California Food and Drug Branch.

We source the raw materials for the Celution device, Celution consumable kit and other products that we manufacture from a variety of sources. Most of these components are available from multiple vendors either as off-the-shelf items or as custom fabrication. We purchase our Celase and Intravase regents from Roche Diagnostics Corporation, or Roche. While we have significant inventory of these reagents in inventory, we do not have a second source to provide us with these reagents should our supply arrangement with Roche terminate or be suspended, or should Roche be unable to meet its supply obligations thereunder.

Cytori Nanomedicine

We are in the process of a facility re-start and validations at our recently acquired nanoparticle manufacturing facility located in San Antonio, Texas. Once validation is complete, the facility and processes are designed to comply with cGMP per FDA and EMA regulations to manufacture drug candidates for clinical, research, development and commercial use. Upon approval of our drug candidates, our manufacturing capabilities will encompass validated manufacturing processes for drug product as well as a quality assurance product release process with the ability to ultimately scale-up the process to meet increasing market demands. We believe our strategic investments in the analytical and manufacturing capabilities, including personnel from drug discovery through drug development, will allow us to advance our product candidates more quickly. Our San Antonio facility enables us to produce drug substance in a cost-effective manner while retaining control over the process and timing. As needed, the use of a qualified Clinical Manufacturing Organization may be utilized to perform various manufacturing processes as we deem appropriate to meet our operational objectives.

Our current principal suppliers for our Cytori Nanomedicines business are LGM Pharma, which supplies our active pharmaceutical ingredient, or API (doxorubicin HC1), as well as Lipoid, LLC and Dishman Netherlands, B.V., which supply us with other raw materials used in the manufacture of our ATI-0918 and ATI-1123 drug candidates . Each of these suppliers is currently a sole source supplier.

Competition

We compete primarily on the basis of the safety and efficacy of our therapies across a broad range of clinical indications to address significant unmet medical and market needs, supported by our brand name, pricing, products, published clinical data, regulatory approvals, and reimbursement. We believe that our continued success depends on our ability to:

- Develop and innovate our product and technology platforms;
- Initiate new and advance existing clinical development programs;
- Secure and maintain regulatory agency approvals;
- Build and expand our commercial footprint;
- Achieve improved economies of scale and scope;
- Generate and protect intellectual property;
- Hire and retain key talent; and
- Successfully execute acquisition, licensing, and partnership activities.

Cytori Cell Therapy

According to the Alliance for Regenerative Medicine, there over 700 companies worldwide and 801 clinical trials underway within the global regenerative medicine market. Per Allied Market Research, this market is projected to reach $30.2 billion by 2022 and to be dominated by the cell therapy segment.

Today, we compete directly against companies within the autologous adipose-derived cell therapy segment offering manual, semi-automated, or full automated cell processing and/or banking systems used with or without tissue dissociation reagents. Our primary competitors include, but are not limited to, Adisave, Biosafe Group, GID Group, Healeon Medical, Human Med AG, Medikan International, PNC International, SERVA Electrophoresis GmbH, and Tissue Genesis. None of these companies are conducting clinical trials for the treatment of hand dysfunction in scleroderma patients. However, they are engaged in a number of clinical trials around the world.

Company	Clinical Trial		
	Affiliation	Location	Indication
Adisave	Sponsor	Canada	Wounds and Soft Tissue Defects
GID Group	Sponsor	U.S.	Alopecia
GID Group	Sponsor	U.S.	Knee Osteoarthritis
Healeon Medical	Sponsor	U.S.	Alopecia
Human Med AG	Co-Collaborator	France	Knee Osteoarthritis
Tissue Genesis	Sponsor	U.S.	Critical Limb Ischemia

A study published in 2016 reported that there were 570 medical clinics in the U.S. advertising and offering stem cell treatments, including those derived from adipose tissue, directly to patients. It is unclear whether the FDA will allow these clinics to continue to operate in this fashion and whether they will pose a threat to our business if and at such time that we obtain PMA approval to commercialize Habeo Cell Therapy in the U.S.

In the future, we also anticipate encountering competition from companies developing and offering drugs for the treatment of scleroderma including, but not limited to, Actelion Pharmaceuticals, Allergan, Apricus Biosciences, Bayer, Corbus Pharmaceuticals, Covis Pharma, CSL Behring, Genentech, and United Therapeutics. No companies today have approved drugs indicated for improving hand function in scleroderma patients while only Tracleer® (Bosentan) is approved in Europe for the prevention of new digital ulcers in scleroderma patients. Habeo Cell Therapy is expected to compete with or be used in conjunction with second and/or third line therapies including, but not limited to, phosphodiesterase inhibitors, botulinum toxin A, angiotensin II receptor blockers, ACE inhibitors, alpha blockers, selective serotonin reuptake inhibitors, topical nitrates, IV prostanoids, endothelin receptor antagonists, immunosuppressants, and surgical interventions.

Cytori Nanomedicine™

ATI-0918, our generic liposomal encapsulated doxorubicin product candidate is expected to face competition from both patented and generic nanomedicine products for the treatment of breast cancer (BC), ovarian cancer (OC), multiple myeloma (MM), and/or Kaposi's Sarcoma (KS) in all geographies. New nanoparticle-doxorubicin monotherapies and drug combination therapies represent third generation approaches intended to be safer and more effective than today's patented and generic pegylated liposomal doxorubicin.

U.S.				
Company	Product	Formulation	Stage	Indications
JNJ Janssen	DOXIL	Pegylated liposomal doxorubicin	Commercial	BC, OC, MM, KS
Sun Pharma	Lipodox	Pegylated liposomal doxorubicin	Commercial	BC, OC, MM, KS
Taiwan Liposome Co	Doxisome	Pegylated liposomal doxorubicin	ANDA Submitted	BC, OC, KS
Teva Actavis	Doxorubicin Liposome	Pegylated liposomal doxorubicin	ANDA Submitted	BC, OC, MM, KS
Celsion	Thermodox	Heat-sensitive liposomal doxorubicin	Phase 1/2/3	Liver; Recurrent BC
Supratek Pharma	SP1049C	Block copolymer doxorubicin	Phase 1/2/3	Upper GI, MDR lung, BC
Adocia	DriveIn	Hyaluronan nanoparticle doxorubicin	Preclinical	

Europe				
Company	**Product**	**Formulation**	**Stage**	**Indications**
JNJ Janssen	CAELYX	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS
Teva	Myocet	Non-pegylated liposomal doxorubicin	Commercial	Breast (with cyclophosphamide)
Taiwan Liposome Co	Doxisome	Pegylated liposomal doxorubicin	MAA Submission H1 2017	BC, OC, KS
InnoMedica	Talidox	Glycan targeted liposomal doxorubicin	Phase 1/2	OC, KS
Ceronco Biosciences	CB001	Glucosylceramide-enriched liposomal doxorubicin	Preclinical	BC, OC, KS

Rest of World					
Country	**Company**	**Product**	**Formulation**	**Stage**	**Indications**
China	Shanghai F-Z	Libaoduo	Pegylated liposomal doxorubicin	BE Study vs Lipodox Ongoing	BC, OC, KS
China	CSPC	Duomeisu	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS, MM, lymphoma
Hong Kong	NAL Pharma	NAL1872	Pegylated liposomal doxorubicin	Preclinical	BC, OC, KS
India	Intas Pharma	Pegadria	Pegylated liposomal doxorubicin	BE Study vs DOXIL Complete	BC, OC, KS
India	Dr. Reddy's Labs	Doxorubicin	Pegylated liposomal doxorubicin	BE Study vs Lipodox Ongoing	BC, OC, KS
India	Alkem Labs	Lipisol	Pegylated liposomal doxorubicin	Commercial	
India	Celon Labs	Lippod	Pegylated liposomal doxorubicin	Commercial	BC, OC, MM, KS
India	Cipla	Oncodox PEG	Pegylated liposomal doxorubicin	Commercial	BC, OC, MM, KS
India	Natco Pharma	Natdox-LP	Pegylated liposomal doxorubicin	Commercial	OC
India	SRS Pharma	Dox HCl Liposome	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS
India	Parenteral Drugs	Doxopar	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS
India	Zuventus	Rubilong	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS
India	Zydus Cadila	Nudoxa	Pegylated liposomal doxorubicin	Commercial	BC, OC, KS
Philippines Sri Lanka Taiwan Thailand Vietnam	TTY Biopharm	Lipo-dox	Pegylated liposomal doxorubicin	Commercial	BC, OC, MM, KS
Philippines Sri Lanka Taiwan Thailand Vietnam	TTY Biopharm	CAELYX II	Pegylated liposomal doxorubicin	Development	BC, OC, MM, KS
Russia	Oasmia	Doxophos	Nanoparticle doxorubicin	MAA Submission in Dec 2015	BC

Our ATI-1123 product candidate is expected to face competition from both Sanofi's Taxotere, which is approved for 11 indications and available in 90 countries with a majority of sales from China, Japan, Korea, and Taiwan, and generic docetaxel which is available from major suppliers in the U.S., Europe and Japan including, but not limited to, Accord, Actavis, Dr. Reddy's Labs, GLS Pharma, Hospira, Sun Pharma, Teva, and Winthrop. Further competition may result from advances made by companies currently developing nanoparticle-docetaxel products including, but not limited to, Adocia, Cristal Therapeutics, and Oasmia Pharmaceutical.

Research and Development

Research and development expenses were $16.2 million and $19.0 million for the years ended December 31, 2016 and 2015, respectively. These expenses have supported the basic research, product development and clinical activities necessary to bring our products to market.

Our research and development efforts in 2016 focused predominantly on the following areas:

- Completion of enrollment in the STAR (hand manifestation of scleroderma) trial and ongoing ACT-OA (knee osteoarthritis) trial expenses;
- Support of ongoing preclinical and other research activities towards BARDA contract milestones;
- Support of the investigator initiated trials ADRESU in Japan and SCLERADEC-II in France;
- Planning and development of next generation Celution Cell Therapy products, including detailed product roadmaps for the device, consumables and accessories;

- Development of new configurations and expanded functionality of our Celution ® platform to address the current Japanes e regulatory approval as a medical device (Japan Class I) and other markets;
- Conduct ADRC viability and transport studies in support of clinical trial requirements;
- Conduct presentation and publishing of research efforts related to ADRC characterization and potency to further establish scientific leadership in the field; and
- Continued optimization and development of the Celution ® System family of products and next-generation devices, single-use consumables and related instrumentation.

Intellectual Property

Our success depends in large part on our ability to protect our proprietary technology, including the Celution® System product platform, and to operate without infringing on the proprietary rights of third parties. We rely on a combination of patent, trade secret, copyright and trademark laws, as well as confidentiality agreements, licensing agreements and other agreements, to establish and protect our proprietary rights. Our success also depends, in part, on our ability to avoid infringing patents issued to 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.

To protect our proprietary medical technologies, including the Celution® System platform and other scientific discoveries, we have a portfolio of over 100 issued patents worldwide. We currently have 34 issued U.S. patents and 68 issued international patents. Of the 34 issued U.S. patents, eight were issued in 2016. Of the 68 issued international patents, seven were issued in 2016. In addition, we have over 45 patent applications pending worldwide related to our Cytori Cell Therapy technology. We are seeking additional patents on methods and systems for processing adipose-derived stem and regenerative cells, on the use of adipose-derived stem and regenerative cells for a variety of therapeutic indications, including their mechanisms of actions, on compositions of matter that include adipose-derived stem and regenerative cells, and on other scientific discoveries. We are seeking additional patents on methods and systems for processing adipose-derived stem and regenerative cells, on the use of adipose-derived stem and regenerative cells for a variety of therapeutic indications, including their mechanisms of action, on compositions of matter that include adipose-derived stem and regenerative cells, and on other scientific discoveries. Regarding our Cytori Nanomedicine program, as part of our assert acquisition transaction with Azaya Therapeutics, we acquired Azaya Therapeutics' patent portfolio consisting of two issued patents, and one pending patent application. Since the Azaya asset acquisition, we have filed one patent application relating to Cytori Nanomedicine, and intend to actively continue to enhance our nanomedicine portfolio.

We cannot assure that any of our pending patent applications will be issued, that we will develop additional proprietary products that are patentable, that any patents issued to us will provide us with competitive advantages or 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, we cannot assure that others will not independently develop similar products, duplicate any of our products or design around our patents. 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.

There is a risk that any patent applications that we file and any patents that we hold or later obtain could be challenged by third parties and declared invalid or infringing of third party claims. For many of our pending applications, patent interference proceedings may be instituted with the U.S. Patent and Trademark Office, or the USPTO, when more than one person files a patent application covering the same technology, or if someone wishes to challenge the validity of an issued patent. At the completion of the interference proceeding, the USPTO will determine which competing applicant is entitled to the patent, or whether an issued patent is valid. Patent interference proceedings are complex, highly contested legal proceedings, and the USPTO's decision is subject to appeal. This means that if an interference proceeding arises with respect to any of our patent applications, we may experience significant expenses and delay in obtaining a patent, and if the outcome of the proceeding is unfavorable to us, the patent could be issued to a competitor rather than to us. Third parties can file post-grant proceedings in the USPTO, seeking to have issued patent invalidated, within nine months of issuance. This means that patents undergoing post-grant proceedings may be lost, or some or all claims may require amendment or cancellation, if the outcome of the proceedings is unfavorable to us. Post-grant proceedings are complex and could result in a reduction or loss of patent rights. The institution of post-grant proceedings against our patents could also result in significant expenses.

Patent law outside the United States is uncertain and in many countries, is currently undergoing review and revisions. The laws of some countries may not protect our proprietary rights to the same extent as the laws 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 United States. 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 or issued patents in Europe, Brazil, Mexico, India, Russia, Australia, Japan, Canada, China, Korea and Singapore, among others.

In addition to patent protection, we rely on unpatented trade secrets and proprietary technological expertise. We cannot assure you that others will not independently develop or otherwise acquire substantially equivalent techniques, somehow gain access to our trade secrets and proprietary technological expertise or disclose such trade secrets, or that we can ultimately protect our rights to such unpatented trade secrets and proprietary technological expertise. We rely, in part, on confidentiality agreements with our marketing partners, employees, advisors, vendors and consultants to protect our trade secrets and proprietary technological expertise. We cannot assure you that these agreements will not be breached, 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.

Government Regulation – Medical Devices

As a medical company, we operate under stringent regulations and our companies and products are subject to a variety of distinct regulations around the world that are subject to modification or change.

Cytori Cell Therapy

Cytori Cell Therapy technology is regulated through a variety or agencies and approaches around the world. Our products must receive regulatory clearances or approvals from regulatory bodies in the European Union such as the EMA and the FDA and from other applicable governments prior to their sale or in some cases prior to clinical trials. This technology platform incorporates multiple elements including devices, reagents and software that in combination yield an autologous cellular product. As a result of the complex nature of our products and differing regulations through the world, there is no single unified of global set of regulatory requirements or common approach to regulation and is therefore region specific.

Cytori Cell Therapy technology is, and will be, 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 requirements to comply with Quality System Regulations/Good Manufacturing Practices. Other statutory and regulatory requirements govern, among other things, registration and inspection, medical device listing, prohibitions against misbranding and adulteration, labeling and post-market reporting. In the U.S., we must currently obtain FDA clearance or approval through the PMA application process, which requires clinical trials to generate clinical data supportive of safety and efficacy. Approval of a PMA could take four or more years from the time the process is initiated due to the requirement for clinical trials. 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.

Recently, the U.S. government enacted the 21st Century Cures Act, or the CURES Act, in the United States that has many provisions that could be favorable for us. However, the provisions of the CURES Act are broad and lack enough detail currently to determine its effect on our regulatory pathway. Further interpretation and implementation of the CURES Act must occur before any definitive assessments can be made.

Outside the U.S., the Cytori Cell Therapy family of products must also comply with the government regulations of each individual country in which the products are to be distributed and sold. These regulations vary in complexity and can be as stringent, and on occasion even more stringent, than FDA regulations in the United States. International government regulations vary from country to country and region to region. For example, regulations in some parts of the world only require product registration while other regions/countries require a complex product approval process. 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 precedent. Furthermore, the level of complexity and stringency is not always precisely understood today for each country, creating greater uncertainty for the international regulatory process. Furthermore, government regulations can change with little to no notice and may result in up-regulation of our product(s), thereby, creating a greater regulatory burden for our cell processing and cell banking technology products.

In Europe, Cytori Cell Therapy is approved as the Celution device and consumable product and is sold for commercial and research use. Expansion of use of Cytori Cell Therapy in Europe will likely require an expansion of our regulatory claims that would likely include disease-specific claims obtained through the completion of clinical trials. It is possible that Cytori Cell Therapy may be regulated as a device, similar to its regulatory pathway in the U.S., an advanced tissue medicinal product or ATMP, or some combination of the two in Europe. Cytori is current working with both European authorities and country-specific competent authorities to clarify the proper path for Cytori’s Habeo Cell Therapy in Europe.

Regulations in the Asia-Pacific and Japan regions are currently evolving for cell therapy products. For example, the Japan Diet enacted a regenerative medicine law in November of 2014 foll owing sweeping changes in Japan's medical device regulations in 2014. In China, the regulatory landscape for cell therapies such as ours is subject to increasing regulation, and success in this market will depend heavily on a firm understanding of applica ble regulations and a commitment to pursuing appropriate regulatory approvals, including any required approvals from the National Health and Family Planning Commission of the People's Republic of China, or NHFPC, and other governmental entities. These regu latory uncertainties further complicate the regulatory process in the Asia-Pacific region and may lengthen approval timelines and/or market entrance or penetration.

Regulatory Developments

China Regulatory Clearance

In April 2015, the State Food and Drug Administration of the People's Republic of China, or CFDA, granted regulatory clearance for our Celution device, consumable kit and reagents necessary to allow the importation and sale of our products into the Chinese market, the world's largest healthcare market. The Chinese market for our Celution products is subject to an exclusive license in favor of our partner, Lorem Vascular.

EU Orphan Designation

In April 2015, the European Commission, acting on the positive recommendation from the European Medicines Agency Committee for Orphan Medicinal Products, granted an orphan drug designation to Assistance Publique Hopitaux du Marseille (France), the sponsor institution for the SCLERADEC I and SCLERADEC II trials using Cytori Cell Therapy, for the treatment of systemic sclerosis.

In April 2016, the European Commission, acting on the positive recommendation from the European Medicines Agency Committee for Orphan Medicinal Products, issued orphan drug designation to a broad range of Cytori Cell Therapy formulations when used for the treatment of systemic sclerosis under Community Register of Orphan Medicinal Products number EU/3/16/1643.

In November 2016, the US FDA Office of Orphan Products Development (OOPD) granted Cytori an orphan drug designation for cryopreserved or centrally processed ECCS-50 Habeo for scleroderma.

Government Regulation – Nanoparticle Oncology Drugs

Our nanoparticle oncology drug products must receive regulatory approvals from the EMA and the FDA and, from other applicable governments prior to their sale.

Our current and future nanoparticle oncology drugs are, or will be, 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 oncology drugs. Included among these regulations are drug approval requirements and the current Good Manufacturing Practices, cGMP. Other statutory and regulatory requirements govern, among other things, cGMP inspection, prohibitions against misbranding and adulteration, labeling and post-market reporting. The recent CURES Act legislation regarding drugs in the United States has yet to be implemented and may yield additional regulatory requirements on therapeutic drugs while providing some relief in selected regulatory burdens. The FDA's interpretation and implementation of the CURES Act has yet to be published.

Our nanoparticle oncology drugs must also comply with the government regulations of each individual country in which the products are to be distributed and sold. These regulations vary in complexity and can be as stringent, and on occasion even more stringent, than FDA regulations in the United States. International government regulations vary from country to country and region to region. For instance, our ATI-0918 drug candidate relies on an expedited approval process referred to as 'bioequivalence' or BE approved under an abbreviated new drug application, or ANDA. ANDA and BE products require a 'reference drug' and/or 'reference listed drug' ,or RLD, to show equivalence with. The reference drug may not be the same in all territories or countries, which could require different and unique BE clinical studies for some territories. Furthermore, the level of complexity and stringency is not always precisely understood today for each country, creating greater uncertainty for the international regulatory process. Additionally, government regulations can change with little to no notice and may result in the elimination of the BE regulatory pathway in some regions, creating increased regulatory burden.

Worldwide, the regulatory process can be lengthy, expensive, and uncertain with no guarantee of approval. Before any new drugs may be introduced to the U.S. market, the manufacturer generally must obtain FDA approval through either ANDA process for generic drugs off patent that allow for bioequivalence to and existing reference listed drug, or the lengthier new drug approval (NDA) process,

which typically requires multiple successful Phase III clinical trials to generate clinical data supportive of saf ety and efficacy along with extensive pharmacodynamic and pharmacokinetic preclinical testing to demonstrate safety. Approval of a ANDA could take four or more years from the time the process is initiated due to the requirement for clinical trials. NDA dru gs could take significantly longer due to the additional preclinical requirements along with the typical requirement for two successful Phase III clinical trials.

Our lead ATI-0918 drug candidate is eligible for the ANDA regulatory pathway, while our ATI-0123 drug candidate is subject to the significantly lengthier NDA process. Changes to the reference listed drug (RLD) for drugs eligible for the ANDA process can result in significant delays in the regulatory process as BE clinical studies may need to be repeated for regions / countries that no longer recognize the RLD utilized in BE clinical studies. 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, refusals to approve new applications or notifications, and criminal prosecution.

Drugs are also subject to post-market reporting requirements for deaths or serious injuries when the drug may have caused or contributed to the death or serious injury, or serious adverse events. If safety or effectiveness problems occur after the drug reaches the market, the FDA may take steps to prevent or limit further marketing of the drug. Additionally, the FDA actively enforces regulations prohibiting marketing and promotion of drugs for indications or uses that have not been approved by the FDA.

We must comply with extensive regulations from foreign jurisdictions regarding safety, manufacturing processes and quality. These regulations, including the requirements for marketing and authorization, may differ from the FDA regulatory scheme in the United States.

Employees

As of December 31, 2016, we had 65 full-time employees. Of these full-time employees, seven were engaged in manufacturing, 31 were engaged in research and development, nine were engaged in sales and marketing and 18 were engaged in management, finance and administration. From time to time, we also employ independent contractors to support our operations. Our employees are not represented by any collective bargaining agreements and we have never experienced an organized work stoppage.

Corporate Information and Web Site Access to SEC Filings

We were initially formed as a California general partnership in July 1996, and incorporated in the State of Delaware in May 1997. We were formerly known as MacroPore Biosurgery, Inc., and before that as MacroPore, Inc. Our corporate offices are located at 3020 Callan Road, San Diego, CA 92121. Our telephone number is (858) 458-0900. We maintain an Internet website at www.cytori.com. Through this site, we make available free of charge our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934, or the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the U.S. Securities and Exchange Commission, or the SEC. In addition, we publish on our website all reports filed under Section 16(a) of the Exchange Act by our directors, officers and stockholders owning more than 10% of our outstanding common stock. These materials are accessible via the Investor Relations—Reports and Filings section of our website within the “SEC Filings” link. Some of the information is stored directly on our website, while other information can be accessed by selecting the provided link to the section on the SEC website, which contains filings for our company and its insiders.

The public can also obtain any documents that we file with the SEC at http://www.sec.gov . The public may read and copy any materials that we file with the SEC at the SEC’s Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

Item 1A. Ri sk Factors

In analyzing our company, you should consider carefully the following risk factors together with all of the other information included in this Annual Report on Form 10-K, including our audited Consolidated 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.

Risks Related to Our Business and Industry

Our success depends substantially upon the successful development and commercialization of our cellular therapeutics, and if we are unable to develop and commercialize our cellular therapeutic product candidates, especially Habeo Cell Therapy, our business could be seriously harmed.

Our success in large part is dependent upon our ability to develop our Cytori Cell Therapy products, and in particular, our Habeo Cell Therapy product. The success of Habeo Cell Therapy and any future cellular therapeutic products are highly dependent on meeting our primary endpoint in our U.S. Phase III STAR clinical trial. Further, if the primary endpoint in the currently enrolling French investigator-initiated SCLERADEC II trial is met, then the SCLERADEC II data would also be valuable to our regulatory and commercialization efforts within and outside the EU and could play a useful supporting role in any regulatory submissions to the U.S. FDA. If the STAR and/or SCLERADEC II clinical trial data are not deemed sufficient to support continued development and commercialization of Habeo Cell Therapy, our business will be significantly harmed. Further, even if the primary endpoints in these clinical trials are met, our ability to receive regulatory approval on a timely (or even possibly expedited) basis in the market in which we intend to market and sell Habeo Cell Therapy, and to receive the reimbursement coding, coverage and payment that we are currently anticipating, will likely be directly correlated to the reported efficacy of our Habeo Cell Therapy in the STAR trial, as well as SCLERADEC II clinical trial. There can be no assurance that such clinical data will meet these trials' primary or secondary endpoints, or if met, that such data will support the regulatory approvals or reimbursement that we would seek for Habeo Cell Therapy, or any regulatory approvals or reimbursement at all.

Development and commercialization of our cellular therapeutics product candidates could be further materially harmed if we encounter difficulties such as:

- an inability to produce Habeo Cell Therapy or our other Cytori Cell Therapy product candidates at an appropriate cost or to scale for commercialization so as to meet customer demand for our cell therapy products; and
- delayed, unexpected and/or adverse regulatory guidance, feedback or determinations, whether because of the novelty of our technology, changes in regulatory approval processes, or otherwise.

We believe we must also continue to develop and manufacture enhanced and lower-cost versions of our Celution devices, reagents, and consumable kits. If we are not able to develop products capable of successfully competing in the marketplace, or if we experience disruptions and/or delays in our production of these products as required by the marketplace, our operations and commercialization efforts would be harmed. Further, there can be no assurance that we will be able to successfully develop and manufacture future generation Celution devices and other products 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, or their successor products, to meet future demand, or that we will be able to overcome unforeseen manufacturing difficulties for this sophisticated equipment.

Our future success is in large part dependent upon our ability to successfully integrate and develop our Cytori Nanomedicine platform and commercialize our newly acquired ATI-0918 drug candidate, and any failure to do so could significantly harm our business and prospects.

In February 2017, we acquired substantially all of the assets of Azaya Therapeutics Inc, or Azaya, including Azaya's two drug candidates, ATI-0918 and ATI-1123, and related manufacturing equipment and inventory. Our ability to successfully integrate, develop and commercialize these assets is subject to a number of risks, including the following:

- Azaya suspended its business, including its research and development efforts, at the end of 2015, so we must recommence the business, including (i) recalibration, revalidation and requalification of the acquired drug manufacturing equipment and manufacturing facility located in San Antonio, Texas; and (ii) hiring of substantial numbers of new employees to operate the Cytori Nanomedicines business. We may encounter unexpected issues and expenses in recommencing this business;

- We do not have substantive drug development and commercialization experience, and thus we will be required to hire and rely on significant numbers of scientific, quality, regulatory and other technical personnel with the experience and expertise necessary to develop and commercialize our Cytori Nanomedicine drug candidates. We may be unable to identify, hire and retain personnel with the requisite experience to conduct the operations necessary to commercialize our ATI-0918 and ATI-1123 product candidates, in which case our business would be materially harmed;

- ATI-0918, a complex generic liposomal formulation of doxorubicin, is very difficult to manufacture, and we can offer no assurances that we will (i) be able to manufacture this drug in accordance with all applicable laws and regulations; or (ii) demonstrate bioequivalence to Lipodox® (Sun Pharma) in the United States; or Caelyx® (Janssen, a Johnson & Johnson company) in Europe as required to obtain regulatory approvals within our currently anticipated timeframes, or at all;

- We intend to find a commercialization partner to share or assume responsibility for commercialization, marketing and sales activities and related costs and expenses for our ATI-0918 drug candidate, as well as our ATI-1123 drug candidate. We do not currently have the financial resources to develop our ATI-1123 drug candidate internally, nor do we currently have the financial or human resources to market and sell ATI-0918 or ATI-1123 if and when commercialized, so if we are unable to find a suitable partner to take on these activities and costs, we may be forced to delay or suspend our development and commercialization activities, or procure additional capital to continue development of these drug candidates ourselves. There can be no assurance that we would obtain sufficient capital to fund the development and commercialization of our Cytori Nanomedicines program ourselves, or if we do obtain such capital, that our development and commercialization efforts would be successful;

- Conduct of this newly acquired business will require significant capital, and to the extent that we incur unanticipated expenses or revenue downturns in our business, are unable to timely obtain sufficient additional capital on terms acceptable to us (or at all) to fund this business, our ability to commercialize our ATI-0918 drug candidate could be materially and adversely impacted;

- New competitive products become commercially available before we launch ATI-0918;

- It is possible that the EMA could change the reference drug for ATI-0918 in Europe from Caelyx. Though we deem this possibility to be unlikely, if the EMA were to change the reference drug, we could be required to conduct a bioequivalence trial to establish bioequivalence with the new reference drug, which would adversely affect our business and operations; and

- We are not experienced in acquiring and integrating new businesses.

If we are unable to successfully partner with other companies to commercialize our product candidates, our business could materially suffer.

A key part of our business strategy is to leverage strategic partnerships/collaborations to commercialize our product candidates. We do not have the financial, human or other resources necessary to develop, commercialize, launch or sell our therapeutic offerings in all of the geographies that we are targeting, and thus it is important that we identify and partner with third parties who possess the necessary resources to bring our products to market. We expect that any such partners will provide regulatory and reimbursement/pricing expertise, sales and marketing resources, and other expertise and resources vital to the success of our product offerings in their territories. We further expect, but cannot guarantee, that any such partnering arrangements will include upfront cash payments to us in return for the rights to develop, manufacture, and/or sell our products in specified territories, as well as downstream revenues in the form of milestone payments and royalties.

We are currently prioritizing our efforts to find a strategic partner for our Habeo Cell Therapy, formerly ECCS-50, which is specifically intended for treatment of hand dysfunction in scleroderma patients. For various reasons, including the novelty of our cellular therapeutic approach, the regulatory and reimbursement environments for Habeo Cell Therapy in certain markets, including Europe and the Asia-Pacific region, are complex and uncertain. There can be no assurance that regulatory agencies or authorities in the U.S., Europe, the Asia-Pacific region or elsewhere will grant conditional or full regulatory approval for Habeo Cell Therapy on the timeframes we anticipate, or at all, nor can we guarantee that government or commercial payers will grant us favorable reimbursement for use of Habeo Cell Therapy. Further, even if we receive regulatory approval and favorable reimbursement, there is no guarantee that a market will develop for Habeo Cell Therapy at our intended price points, or at all. These commercialization risks could affect prospective partners' or collaborators' willingness to enter into partnering arrangements on terms acceptable to us, or at all. Prospective partners may be unwilling to enter into an agreement with us unless and until we announce positive top-line data from our STAR clinical trial, which announcement is expected to occur in or around mid-2017. If the STAR and/or SCLERADEC II clinical trial data do not meet their primary endpoints, we anticipate that it will be difficult to thereafter find a commercialization partner for

our Habeo Cell Therapy on favorable terms, if at all. If we do conclude a partnering arrangement for our Habeo Cell Therapy prior to announcement of STAR clinical trial data, any such agreement may contain certain payment conditions, termination rights or other rights and obligations that would be triggered by positive or negative STAR data.

We are also prioritizing our efforts to find a strategic partner to help commercialize and sell our ATI-0918 drug candidate, initially in Europe, and secondarily, to fund development and commercialization of our ATI-1123 product candidate. We do not currently have the commercial expertise or resources to market and sell either ATI-0918 or ATI-1123. There can be no assurance that we will enter into partnering agreements for either ATI-0918 or ATI-1123 with suitable partners on terms acceptable to us, or at all. However, regardless of whether we enter into a partnering agreement for ATI-0918, we will still incur significant near-term costs and expenses in manufacturing, testing and validating it and in performing necessary regulatory and clinical work to ready our EMA marketing dossier for submission. If we cannot find a suitable partner for our ATI-0918 product candidate, our business could be significantly harmed.

We are also soliciting partnering interest in our ECCO-50 therapeutic for use in knee osteoarthritis, but we anticipate that our partnering efforts with respect to this indication will be subordinate to our Habeo Cell Therapy and ATI-0918 partnering efforts. Further, while consistent trends were observed in most secondary endpoints relative to the placebo group in our ACT-OA knee osteoarthritis trial, the 12-week endpoint of single pain on walking question did not achieve statistical significance, so there can be no assurance that our partnering efforts for our ECCS-50 therapeutics will be successful.

In addition, we may seek development and/or commercial partners for the other therapeutic indications set forth in our clinical pipeline, including:

- use of Cytori Cell Therapy in stress urinary incontinence, or SUI, in men following surgical removal of the prostate gland (this therapeutic indication is currently the subject of a Phase III, investigator-initiated trial in Japan, called ADRESU); and

- development of Cytori Cell Therapy for Secondary Raynaud's Phenomenon, or SRP (this therapeutic indication is currently in the pre-clinical stage).

There can be no assurance that these male SUI and SRP pipeline indications will be attractive to prospective partners. The male SUI market is small (approximately $45.0 million), and the long-term viability of both indications, especially SRP, is in substantial part dependent upon receipt of positive STAR and/or SCLERADEC II clinical data.

Even if we succeed in securing partners for our lead or other product candidates, our partners may fail to develop or effectively commercialize our product candidates. Partnerships and collaborations involving our products and product candidates pose a number of risks, including the following:

- partners may not have sufficient resources or may decide not to devote the necessary resources due to internal constraints such as budget limitations, lack of human resources, or a change in strategic focus;

- partners may believe our intellectual property is not valid or is unenforceable or unprotectable, or the product or product candidate infringes on the intellectual property rights of others;

- partners may dispute their responsibility to conduct development and commercialization activities pursuant to the applicable collaboration, including the payment of related costs or the division of any revenues;

- partners may decide to pursue a competitive product developed outside of the partnering arrangement;

- partners may not be able to obtain, or believe they cannot obtain, the necessary regulatory approvals or reimbursement rates for the product candidates; and

- partners may decide to terminate or not to renew their agreement with us for these reasons or other reasons.

As a result, partnering agreements may not lead to development or commercialization of our lead product candidates or other product candidates in the most efficient manner or at all.

Our current business strategy is high-risk.

Our current business strategy is to aggressively develop and commercialize our Cytori Cell Therapy and Cytori Nanomedicine platforms, while simultaneously controlling expenses and preserving and growing our existing contract and

commercial sales rev enues. We also believe that there are synergies between our existing cellular therapeutic technologies and our oncology drug assets that we can exploit and commercialize.

Our current business strategy is a high-risk strategy for a number of reasons including the following:

- current and anticipated clinical trials using Cytori Cell Therapy, including our current STAR clinical trial and the investigator-initiated SCLERADEC II trial, may not yield positive results;
- research and development and commercialization of our cellular therapeutics and our oncology drug assets will require significant amounts of additional capital, and we cannot assure you that we will have access to sufficient capital, or find partners to provide capital, necessary to develop and bring our products to market;
- our business model may be challenging for prospective business partners, as our therapeutic approach involves:
    - multiple procedures - liposuction followed by preparation and same-day administration of the autologous cellular therapeutic – for which there may not be existing reimbursement codes (or which reimbursement codes may not be deemed adequate by prospective partners); and
    - processing of cells via our Celution System (which to date has been regulated as a medical device), followed by administration of our Cytori Cell Therapy, which is considered to be a drug by FDA and other regulatory agencies.
- our current installed base of Celution devices may pose potential risks to us if the operators of these devices (i) harm a patient during the course of treating the patient with Cytori Cell therapy; or (ii) treat patients “off label” in a manner that is competitive with us, creates channel conflict with us, or otherwise negatively impacts our business;
- our Celution platform is a novel technology that may never receive regulatory or commercial approval for our intended therapeutic indications;
- we may incur material costs and expenses in executing our business strategy that are not currently contemplated and that could cause our operating expenses to materially increase beyond current projections;
- our Celution technology is potentially subject to different regulatory regimes in different territories, and we are not experienced in obtaining regulatory approvals for therapeutic indications, such as hand complications of scleroderma, of our Cytori Cell Therapy products;
- we do not have an operating history as a drug development company, or prior experience with obtaining regulatory, reimbursement or other approvals for drug candidates such as ATI-0918 and ATI-1123;
- our ATI-0918 and ATI-1123 drug candidates, if commercialized, will compete against established competitive drugs that are marketed and sold by large companies with significant human, technical and financial resources;
- we are not experienced in acquiring and integrating new assets, such as those acquired from Azaya;
- we are unfamiliar with the competitive landscape for our Cytori Nanomedicines product candidates, and as such key assumptions regarding customer acceptance and market share may not be realized;
- our product candidates may never become commercially viable;
- we may not be able to prevent other companies from depriving us of market share and profit margins by selling products based on our intellectual property and developments; and
- the regenerative medicine industry is a very risky industry, and this has adversely affect our ability to attract investment capital and collaborators for our Cytori Cell Therapy.

Our business is sensitive to general economic, business and industry conditions.

We are exposed to general economic, business and industry conditions, both in the United States and globally. Adverse global economic and financial conditions are difficult to predict and mitigate against, and therefore the potential impact is difficult to estimate. Negative trends in the economy, including trends resulting from an actual or perceived recession, tightening credit markets, such as significant reductions in available capital and liquidity from banks and other credit providers, substantial volatility in equity

and currency values worldwide, prolonged recessionary or slow growth periods, increased cost of commodities, including oil, actual or threatened military action by the United States, and threats of terrorist attacks in the United States a nd abroad, could cause a reduction of investment in and available funding for companies in certain industries, including ours and those of our customers. Thus, our business operations and ability to raise capital has been, and may in the future, be adverse ly affected by downturns in current credit conditions, financial markets and the global economy.

We face intense competition, and if our competitors market and/or develop products that are marketed more effectively, approved more quickly than our product candidates or demonstrated to be safer or more effective than our products, our commercial opportunities could be reduced or eliminated .

The life science industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary therapeutics. We face competition from a number of sources, some of which may target the same indications as our products or product candidates, including small and large, domestic and multinational, medical device, biotechnology and pharmaceutical companies, academic institutions, government agencies and private and public research institutions, many of which have greater financial resources, sales and marketing capabilities, including larger, well-established sales forces, manufacturing capabilities, experience in obtaining regulatory approvals for product candidates and other resources than we do.

We expect that product candidates in our pipeline, if approved, to compete on the basis of, among other things, product efficacy and safety, time to market, price, coverage and reimbursement by third-party payers, extent of adverse side effects and convenience of treatment procedures. One or more of our competitors may develop other products that compete with ours, obtain necessary approvals for such products from the FDA, EMA, MHLW or other agencies, if required, more rapidly than we do or develop alternative products or therapies that are safer, more effective and/or more cost effective than any products developed by us. The competition that we will encounter with respect to any of our product candidates that receive the requisite regulatory approval and classification and are marketed will have an effect on our product prices, market share and results of operations. We may not be able to differentiate any products that we are able to market from those of our competitors, successfully develop or introduce new products that are less costly or offer better results than those of our competitors, or offer purchasers of our products payment and other commercial terms as favorable as those offered by our competitors. In addition, competitors may seek to develop alternative formulations of or technological approaches to our product candidates and/or alternative cell therapy or drug delivery technologies that address our targeted indications.

Cytori Cell Therapy: Cytori Cell Therapy may face competition from cell therapies derived from autologous or allogeneic tissue sources such as adipose tissue, bone marrow and cord blood, and processed using alternative approaches, methods and technologies such as cryopreserved, cultured, expanded, manual, non-enzymatic, selectively isolated cell therapies, and other therapeutic approaches including those administered using oral, subcutaneous, topical and intravenous routes. If approved for the treatment of hand dysfunction and/or Raynaud's Phenomenon in scleroderma patients, Habeo Cell Therapy will likely compete against other products and product candidates. Johns Hopkins University, in collaboration with Allergan, recently completed and reported results from a Phase III clinical trial evaluating injection of Botox into the hands of patients with scleroderma-associated Raynaud's Syndrome. Further, Corbus Pharmaceuticals is conducting a Phase II clinical trial evaluating Resunab (JBT-101) in patients with diffuse cutaneous systemic sclerosis and has reported positive topline results showing a clear signal of clinical benefit. University of Pittsburgh, in collaboration with the NIAMS, is conducting a Phase II clinical trial evaluating Lipitor's (atorvastatin) effect on blood vessel function and Raynaud symptoms in patients with early diffuse systemic sclerosis. Primus Pharmaceuticals is sponsoring a U.S. multi-center clinical trial to evaluate Diosmiplex in patients with Raynaud's disease. Covis Pharmaceuticals has completed a Phase 2 clinical trial to evaluate Vascana in patients with Raynaud's Phenomenon secondary to Connective Tissue Disease. Apricus Biosciences has completed a Phase 2 clinical trial for Vascana in patients with Raynaud's Phenomenon secondary to systemic sclerosis. Stanford University, in collaboration with United Therapeutics, is sponsoring a Phase 2 clinical trial evaluating oral Orenitram (treprostinil) for the treatment of Calcinosis in patients with systemic sclerosis. Bayer is a collaborator in a Phase 2 clinical trial evaluating Adempas (riociguat) in patients with scleroderma-associated digital ulcers. Bristol-Myers Squibb and NIAID are collaborators in a Phase 2 clinical trial evaluating Abatacept in patients with diffuse cutaneous systemic sclerosis. Invtiva Pharma is sponsoring a Phase 2 clinical trial evaluating IVA337 in patients with diffuse cutaneous systemic sclerosis. The Catholic University of Korea is sponsoring a clinical trial evaluating autologous stromal vascular fraction injected into the fingers of patients with systemic sclerosis. Sanofi is sponsoring a Phase 2 clinical trial evaluating SAR156597 in patients with diffuse systemic sclerosis. Hoffman-La Roche is sponsoring Phase 3 clinical trials evaluating Actemra (tocilizumab) in patients with systemic sclerosis. Most of these studies use the primary and secondary outcome measures as used in our STAR clinical trial.

Our Cytori Cell Therapy may also face competition from lower price alternative cell therapies, including manually processed, or "home brewed" ADRCs that are harvested and used to treat patients for a wide range of indications. There are hundreds of stromal vascular fraction, or SVF, clinics within the United States alone, that purport to offer cell therapy treatments for ailments ranging from facial rejuvenation to stroke. Though FDA has indicated that it intends to regulate this "home brew" industry, if it fails to do so, then companies without FDA approvals may continue to offer cell therapy treatments on an "off-label," unapproved basis at substantially

lower prices then we intend to command. Similar clinics existing in every other market in which we intend to compete. Further, it is possible that positi ve STAR or SCLERADEC II clinical data, if possible, could be used by our cheaper cost competitors to tout their own cell therapy offerings, which could significantly harm our business.

Cytori Nanomedicines: We may face competition for our ATI-0918 asset (which is intended for the treatment of breast and ovarian cancers, multiple myeloma, and Kaposi's sarcoma) from multiple drug classes including antiretrovirals, chemotherapies, corticosteroids, histone deacetaylase inhibitors, hormone therapies, immunotherapies, and targeted therapies, as well as companies seeking approvals in Europe or the United States for their pegylated liposomal doxorubicin products. In particular, if a competitor is first to the European market with an EMA-approved generic liposomal doxorubicin that is bioequivalent to Caelyx, our projections and market assumptions for our ATI-0918 would have to be materially altered and our business could be harmed. Taiwan Liposome Company has reported their intent to file a Marketing Authorization Application, or MAA, with the EMA in the first half of 2017 for its generic Doxisome (TLC177) product which is ahead of our schedule for submitting our MAA for ATI-0918. In the United States, we may face competition for ATI-0918 from multiple generic formulations of pegylated liposomal doxorubicin. Sun Pharma's Lipodox product is currently approved in the United States and both Taiwan Liposome Company (Doxisome) and Actavis have reported that they have filed ANDAs with the FDA. Shanghai F-Z (Libaoduo) and Dr. Reddy's Labs are conducting ongoing bioequivalence studies versus Lipodox which they may decide to use to support FDA submissions for approval of their pegylated liposomal doxorubicin products.

Companies that currently have active development programs for nanoparticle-docetaxel products that may be future competitors for our ATI-1123asset include:

- Adocia's DriveIn nanoparticle-docetaxel product candidate, which is in the preclinical stage;
- Cristal Therapeutics' CriPac nanoparticle-docetaxel, which is currently being evaluated in a Phase 1 clinical trial for the treatment of solid tumors; and
- Oasmia's Docecal, a formulation of docetaxel combined with a patented nanoparticle-based technology, XR17, which is currently being evaluated in a Phase 1 clinical trial.

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. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- research and development resources and experience, including personnel and experience;
- product development, clinical trial and regulatory resources and experience;
- sales and marketing resources and experience;
- manufacturing and distribution resources and experience;
- name, brand and product recognition; and
- resources, experience and expertise in prosecution and enforcement of intellectual property rights.

As a result of these factors, our competitors may obtain regulatory approval of their products more quickly than we are able to or may obtain patent protection or other intellectual property rights that limit or block us from developing or commercializing our product candidates. Our competitors may also develop products that are more effective, more useful, better tolerated, subject to fewer or less severe side effects, more widely prescribed or accepted or less costly than ours and may also be more successful than we are in manufacturing and marketing their products. If we are unable to compete effectively with the marketed therapeutics of our competitors or if such competitors are successful in developing products that compete with any of our product candidates that are approved, our business, results of operations, financial condition and prospects may be materially adversely affected.

Our clinical trials may fail to demonstrate acceptable levels of safety and efficacy for Habeo Cell Therapy or any of our other product candidates, which could prevent or significantly delay their regulatory approval and commercialization.

Clinical testing of our products is a long, expensive and uncertain process, and the failure or delay of a clinical trial can occur at any stage. Many factors, currently known and unknown, can adversely affect clinical trials and the ability to evaluate a product candidate's efficacy. During the course of treatment, patients can die or suffer other adverse events for reasons that may or may not be related to the proposed product being tested. Even if initial results of preclinical and nonclinical studies or clinical trial results are promising, we may obtain different results in subsequent trials or studies that fail to show the desired levels of safety and efficacy, or we may not obtain applicable regulatory approval for a variety of other reasons. For instance, the investigator-initiated 12-patient, open-label SCLERADEC I trial investigating use of Habeo Cell Therapy for hand complications of scleroderma, sponsored by the Assistance Publique Hôpitaux de Marseille, or AP-HM, located in Marseille, France, has reported strong clinical data suggesting safety and efficacy of a single treatment of Habeo Cell Therapyout to three years after treatment. However, there can be no assurances that our current STAR clinical trial or AP-HM's currently enrolling SCLERADEC II clinical trial will be successful. These trials are testing broader human use of Habeo Cell Therapy in blinded, randomized, placebo-controlled trial settings, as opposed to SCLERADEC I's open-label, single arm, uncontrolled, unblinded format. Many companies in our industry have suffered significant setbacks in advanced clinical trials, despite promising results in earlier trials. If our Phase III STAR clinical trial and the Phase III Cytori-supported SCLERADEC II clinical trial do not meet their primary endpoints, we will likely be unable to obtain regulatory approval for our Habeo Cell Therapy, and may be forced to abandon our scleroderma development program, which would severely affect our business.

Further, with respect to the conduct and results of clinical trials generally, in the United States, Europe, Japan and other jurisdictions, the conduct and results of clinical trials can be delayed, limited suspended, or otherwise adversely affected for many reasons, including, among others:

- clinical results may not meet prescribed endpoints for the studies or otherwise provide sufficient data to support the efficacy of our product candidates;
- clinical and nonclinical test results may reveal side effects, adverse events or unexpected safety issues associated with the use of our product candidates;
- lack of adequate funding to continue the clinical trial, including the incurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our contract research organizations, or CROs, and other third parties;
- inability to design appropriate clinical trial protocols;
- slower than expected rates of subject recruitment and enrollment rates in clinical trials;
- regulatory review may not find a product safe or effective enough to merit either continued testing or final approval;
- regulatory review may not find that the data from preclinical testing and clinical trials justifies approval;
- regulatory authorities may require that we change our studies or conduct additional studies which may significantly delay or make continued pursuit of approval commercially unattractive;
- a regulatory agency may reject our trial data or disagree with our interpretations of either clinical trial data or applicable regulations;
- the cost of clinical trials required for product approval may be greater than what we originally anticipate, and we may decide to not pursue regulatory approval for such a product;
- a regulatory agency may identify problems or other deficiencies in our existing manufacturing processes or facilities or the existing processes or facilities of our collaborators, our contract manufacturers or our raw material suppliers;
- a regulatory agency may change its formal or informal approval requirements and policies, act contrary to previous guidance, adopt new regulations or raise new issues or concerns late in the approval process;

- a product candidate may be approved only for indications that are narrow or under conditions that place the product at a competitive disadvantage, which may limit the sales and marketing activities for such products or otherwise adversely impact the commer cial potential of a product; and

- a regulatory agency may ask us to put a clinical study on hold pending additional safety data; (and there can be no assurance that we will be able to satisfy the regulator agencies' requests in a timely manner, which can lead to significant uncertainty in the completion of a clinical study).

In addition, Cytori Cell Therapy is currently the subject of a number of investigator-initiated trials, including the SCLERADEC II clinical trial in France and the ADRESU clinical trial in Japan. While these investigator-initiated trials are useful to help enhance awareness and use of our cell therapy technologies and products, and to identify potential therapeutic targets, there are also associated risks. We do not control the design and conduct of these trials, thus any data integrity issues or patient safety arising out of any of these trials would be beyond our control, yet could adversely affect our reputation and damage the clinical and commercial prospects for our Cytori Cell Therapy product candidates.

We also face clinical trial-related risks with regard to our reliance on other third parties in the performance of many of the clinical trial functions, including CROs, that help execute our clinical trials, the hospitals and clinics at which our trials are conducted, the clinical investigators at the trial sites, and other third party service providers. Failure of any third-party service provider to adhere to applicable trial protocols, laws and regulations in the conduct of one of our clinical trials could adversely affect the conduct and results of such trial (including possible data integrity issues), which could seriously harm our business.

Our success depends in substantial part on our ability to obtain regulatory approvals for Habeo Cell Therapy and ATI-1123. However, we cannot be certain that we will receive regulatory approval for these product candidates or our other product candidates.

We have only a limited number of product candidates in development, and our business depends substantially on their successful development and commercialization. Our product candidates will require development, regulatory review and approval in multiple jurisdictions, substantial investment, access to sufficient commercial manufacturing capacity and significant marketing efforts before we can generate any revenues from sales of our product candidates. The research, testing, manufacturing, labeling, approval, sale, marketing and distribution of drug products are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, whose regulations differ from country to country.

We are not permitted to market our product candidates in the United States until we receive approval from the FDA, or in any foreign countries until we receive the requisite approval from the regulatory authorities of such countries (including centralized marketing authorization from the European Medicines Agency), and we may never receive such regulatory approvals. Obtaining regulatory approval for a product candidate is a lengthy, expensive and uncertain process, and may not be obtained. Any failure to obtain regulatory approval of any of our product candidates would limit our ability to generate future revenues (and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenue), would potentially harm the development prospects of our product candidates and would have a material and adverse impact on our business.

Even if we successfully obtain regulatory approvals to market our product candidates, our revenues will be dependent, in part, on our ability to commercialize such products as well as the size of the markets in the territories for which we gain regulatory approval. If the markets for our product candidates are not as significant as we estimate, our business and prospects will be harmed

Regarding to our two current lead commercialization candidates, Habeo Cell Therapy and ATI-0918:

- Though we believe that Habeo Cell Therapy will be regulated as an Advanced Therapeutic Medicinal Product, or ATMP, in Europe, it is possible that the EMA instead provides a medical device classification for Habeo Cell Therapy, in which case we will be unable to avail ourselves of the orphan drug designation granted to us covering use of Cytori Cell Therapy for systemic sclerosis, and will instead compete with other medical device manufacturers purporting to offer cellular therapeutics competitive with ours (and possibly at much lower price points than we currently contemplate for our therapy). Any classification of Cytori Cell Therapy as a medical device could make it difficult for us to identify pharmaceuticals companies willing to help us commercialize this product offering in Europe, and could also deter medical device companies from partnering with us given potential pricing and competitive concerns.

- If Habeo Cell Therapy is classified as an ATMP in Europe, then we will be required to comply with applicable cGMP requirements, as interpreted and implemented at the national level in each country, which would take longer and cost more to get to market than if Habeo Cell Therapy were classified as a medical device, and would in turn increase the costs of commercializing Habeo Cell Therapy in these countries. Further, potential pharmaceutical

partners may be wary of the medical device component of our cell therapy. These commercialization hurdles could increase the difficulties in finding suitable partners to hel p us commercialize this product offering in Europe.

- The EMA has approved eight ATMPs in Europe to date, with application review periods ranging from approximately thirteen to thirty-five months. This wide range in review periods makes it difficult to predict whether and on what timeframe our Habeo Cell Therapy would receive EMA approval, if at all.

- Given the novelty of our cellular therapeutics technology, we anticipate that we may face regulatory hurdles in other jurisdictions outside of the United States and Europe that could delay regulatory approval and commercial launch of Habeo Cell Therapy.

- The reference drugs for ATI-0918, which are currently Lipodox® in the United States and Caelyx® in Europe, may change.

- Though Azaya previously completed a European ATI-0918 60-patient bioequivalence trial, the EMA has not confirmed the adequacy of the trial for purposes of determining bioequivalence of ATI-0918 to Caelyx®. It is possible that the EMA could require us to conduct another bioequivalency trial for ATI-0918, which would cause us to incur significant delays and additional costs and expense and would materially and adversely affect our business.

- Though it is our intent to expeditiously pursue regulatory review of ATI-0918 in Europe through submission of a marketing authorization application, or MAA, to the EMA, prior to submission of this application we must first conduct and complete certain activities, including chemistry, manufacturing and controls, or CMC, activities, for inclusion in the application, and we cannot guarantee that we will successfully complete these activities.

- We intend to seek scientific advice from the EMA regarding required elements of the MAA before we submit the MAA, and if the EMA's scientific advice requires us to conduct substantive additional work (including possible provision of substantial additional data or information), our submission of the MAA could be materially delayed, which in turn would materially push back our anticipated launch date for ATI-0918 in Europe.

- If we are unable to satisfy the EMA's requirements to issuance of the marketing authorization for ATI-0918, we will not be able to launch ATI-0918 in Europe, and our business would be materially harmed.

If a product candidate is not approved in a timely fashion on commercially viable terms, or if development of any product candidate is terminated due to difficulties or delays encountered in the regulatory approval process, it could have a material adverse effect on our business, and we will become more dependent on the development of other proprietary products and/or our ability to successfully acquire other products and technologies. There can be no assurance that any product candidate will receive regulatory approval in a timely manner, or at all.

If our products candidate and technologies receive regulatory approval but do not achieve broad market acceptance, especially by physicians, the revenues that we generate will be limited.

The commercial success of any of our approved products or technologies will depend upon the acceptance of these products and technologies by physicians, patients and the medical community. The degree of market acceptance of these products and technologies will depend on a number of factors, including, among others:

- acceptance by physicians and patients of the product as a safe and effective treatment;

- any negative publicity or political action related to our or our competitors' products or technologies;

- the relative convenience and ease of administration;

- the prevalence and severity of adverse side effects;

- demonstration to authorities of the pharmacoeconomic benefits;

- demonstration to authorities of the improvement in burden of illness;

- limitations or warnings contained in a product's approved labeling;

- payers' level of restrictions and/or barriers to coverage;
- the clinical indications for which a product is approved;
- availability and perceived advantages of alternative treatments;
- the effectiveness of our or any current or future collaborators' sales, marketing and distribution strategies; and
- pricing and cost effectiveness.

Our Celution technology and products compete against cell-based therapies derived from alternate sources, such as bone marrow, umbilical cord blood and, potentially, embryos. Some of our competitors with products based on these other cell-based therapies have substantially greater financial, human and technical resources than we do. In addition, some of them have approved products with therapeutic claims, established revenues and broad market recognition. Physicians historically are slow to adopt new technologies like ours regardless of the perceived merits when older technologies, as the current standard of care, continue to be supported by established providers. Overcoming such inertia often requires significant marketing expenditures or definitive product performance and/or pricing superiority.

We face similar competitive pressures with our Cytori Nanomedicine product candidates. As a generic liposomal encapsulation of doxorubicin, ATI-0918, if approved and launched commercially, will potentially compete against Caelyx and Myocet® (manufactured by Teva) in Europe, and against Lipodox® in the United States. These existing competitive liposomal doxorubicin products have been on the market for many years, have gained widespread physician acceptance and are marketed by competitors with substantially greater resources than we have. Further, our ATI-1123 product candidate, if developed and commercialized, would compete against a number of established docetaxel drugs, including Taxotere® (Sanofi S.A.) and numerous existing generic docetaxel products.

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.

Overall, our efforts to educate the medical community on the benefits of any of our products or technologies for which we obtain marketing approval from the FDA or other regulatory authorities and gain broad market acceptance may require significant resources and may never be successful. If our products and technologies do not achieve an adequate level of acceptance by physicians, pharmacists and patients, we may not generate sufficient revenue from these products to become or remain profitable.

Many potential applications of our product candidates are pre-commercial, which subjects us to development and marketing risks.

Our products candidates are at various stages of development. Successful development and market acceptance of our products is subject to developmental risks, including risk of negative clinical data from current and anticipated trials, failure of inventive imagination, ineffectiveness, lack of safety, unreliability, manufacturing hurdles, 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 can be no assurance that we or our partners will successfully develop and commercialize our product candidates, or that our competitors will not develop competing technologies that are less expensive or superior. Failure to successfully develop and market our product candidates would have a substantial negative effect on our results of operations and financial condition.

Regarding our cell therapy products, we believe that our long-term viability and growth will depend in large part on our ability to establish the safety and efficacy of our cell therapies through clinical trials and studies. Though we generate revenues from commercial sales of our Celution products, there is no proven path for commercializing Cytori Cell Therapy in a way to earn a durable profit commensurate with the medical benefit. We have been engaged for a number of years in commercial sales of our Celution devices and consumable kits in Japan Europe and certain Asian markets, and our cell banking products in Japan, Europe, and certain Asian markets, but we have not achieved significant growth due in significant part to our inability thus far to obtain therapeutic, on-label use that is reimbursed by payers. Thus, we do not expect the market for our products to appreciably increase until we have positive clinical data from a validated, Phase III, controlled, randomized trial that reports safety and efficacy of our cellular therapeutic in a discrete disease state or condition. However, there can be no assurance that one or more clinical trials of our cell therapy product candidates will yield positive results.

Regarding our Cytori Nanomedicine program, our ATI- 0918 generic drug candidate is pre-commercial. Our ATI-0918 bioequivalence trial results and accompanying manufacturing and other data are subject to review and feedback by the EMA prior to our submission of our marketing authorization application, or MAA , to the EMA. There can be no assurances that the EMA will view the results of the bioequivalence trial favorably. Further, we are required to complete certain manufacturing, drug stability and other activities before we submit our MAA to the EMA. There c an be no assurance that the EMA will deem our MAA sufficient grant us marketing authorization within the timelines we currently project, or at all.

Our ATI-1123 drug candidate is in early clinical stages and is subject to all of the attendant risks of an early-stage drug. Should we wish to commercialize ATI-0918 in the United States, we believe we will need to conduct a clinical trial to demonstrate bioequivalence to the then-current reference drug in the United States (currently Lipodox®). Any such bioequivalency trial would be time and resource intensive, would take years to complete at considerable expense, and could ultimately fail to demonstrate ATI-0918's bioequivalence to the reference drug. Also, we intend to find a partner to develop our ATI-1123 drug candidate, but and if we are unsuccessful in doing so, our ATI-1123 development program could be delayed or suspended.

If we or any party to a key collaboration, licensing, development, acquisition or similar arrangement fails to perform material obligations under such arrangement, or any arrangement is terminated for any reason, there could be an adverse effect on our business .

We are currently party to certain licensing, collaboration and acquisition agreements under which we may make or receive future payments in the form of milestone payments, maintenance fees, royalties and/or minimum product purchases. We are dependent on our collaborators to commercialize Cytori Cell Therapy in certain countries and in certain indications for us to realize any financial benefits from these collaborations. Our collaborators may not devote the attention and resources to such efforts to be successful. In addition, in the event that a party fails to perform under a key collaboration agreement, or if a key collaboration agreement is terminated, the reduction in anticipated revenues could delay or suspend our commercialization efforts in certain countries. Specifically, the termination of a key collaboration agreement by one of our collaborators could materially impact our ability to enter into additional collaboration agreements with new collaborators on favorable terms.

Risks relating to our current material collaborations (excluding our BARDA partnership, which is discussed below in these "Risk Factors") include the following:

- Under our asset purchase agreement with Azaya, we are required to use commercial reasonable efforts to develop our ATI-0918 and ATI-1123 drug candidates, and we have future milestone, earn-out and other payments to Azaya tied to our commercialization and sale activities for these drug candidates. If we are unsuccessful in our efforts to develop our ATI-0918 and ATI-1223 drug assets, or if Azaya and we were to enter into a dispute over the terms of our agreement, then our business could be seriously harmed.

- Lorem Vascular, is our exclusive licensee for our Cytori Cell Therapy products in all fields of use in China, Hong Kong, Singapore, Malaysia and Australia under the terms of the Lorem Agreement. Lorem Vascular is responsible for commercializing our Cytori Cell Therapy products in these territories. Lorem Vascular is relatively new company with no previous operating history, and has yet to generate meaningful revenues in its licensed territories. There can be no assurance that Lorem Vascular will be able to generate meaningful revenues in its licensed territories in the future. We are in ongoing discussions with Lorem Vascular regarding the terms of our collaboration, including the structure of the Lorem Agreement. If we are unable to agree with Lorem Vascular on revised terms to our collaboration, our relationship with them could suffer. A dispute may arise between us and Lorem Vascular that could lead to arbitration or other adversarial proceedings. Any such proceedings could cause significant diversion of management time and attention, cause us significant expense, and could potentially result in an outcome adverse to us. Further, any such dispute could negatively affect our ability to realize any sales or royalty revenues from Lorem Vascular's commercial activities in the territories under its exclusive license. Even if we successfully restructure or otherwise revise our agreement with Lorem Vascular, there can be no assurance that Lorem Vascular will be able to successfully commercialize our Celution products in China or in the other territories subject to its license. Further, if Lorem Vascular fails to comply with any regulations applicable to its development, marketing and sale of our products, there can be no assurance that regulators would not try to hold us responsible for such activities.

- Pursuant to the Bimini Agreement, we have, among other things, granted Bimini an exclusive, worldwide license to use and sell our Cytori Cell Therapy products in the alopecia (hair loss) field. Cytori and Bimini granted certain licenses to each other, and have certain license, royalty and other payment obligations under the Bimini agreement, as well as certain supply, development and non-competition obligations. If we and Bimini were to enter into a dispute regarding the terms of our agreement, our business could be harmed.

If we or our distributors or collaborators fail to comply wi th regulatory requirements applicable to the development, manufacturing, and marketing of our products, regulatory agencies may take action against us or them, which could significantly harm our business.

Our products and product candidates, along with the clinical development process, the manufacturing processes, post-approval clinical data, labeling, advertising and promotional activities for these products, are subject to continual requirements and review by the FDA and state and foreign regulatory bodies. Regulatory authorities subject a marketed product, its manufacturer and the manufacturing facilities to continual review and periodic inspections. We, our distributors and collaborators, and our and their respective contractors, suppliers and vendors, will be subject to ongoing regulatory requirements, including complying with regulations and laws regarding advertising, promotion and sales of products, required submissions of safety and other post-market information and reports, registration requirements, Clinical Good Manufacturing Practices (cGMP) regulations (including requirements relating to quality control and quality assurance, as well as the corresponding maintenance of records and documentation), and the requirements regarding the distribution of samples to physicians and recordkeeping requirements. Regulatory agencies may change existing requirements or adopt new requirements or policies. We, our distributors and collaborators, and our and their respective contractors, suppliers and vendors, may be slow to adapt or may not be able to adapt to these changes or new requirements.

Failure to comply with regulatory requirements may result in any of the following:

- restrictions on our products or manufacturing processes;
- warning letters;
- withdrawal of the products from the market;
- voluntary or mandatory recall;
- fines;
- suspension or withdrawal of regulatory approvals;
- suspension or termination of any of our ongoing clinical trials;
- refusal to permit the import or export of our products;
- refusal to approve pending applications or supplements to approved applications that we submit;
- product seizure;
- injunctions; or
- imposition of civil or criminal penalties.

To the extent any of our customers fail to use our products in compliance with applicable regulations, regulators could try to hold us responsible if they believe we facilitated or were otherwise somehow responsible for our customer's non-compliance.

We currently sell our Celution Cell Therapy products in numerous markets outside of the United States for research and commercial use. These markets have different, and in some cases, less burdensome, regulatory schemes applicable to our products than in the United States. To the extent any of our customers, whether inside or outside the United States, use or further market our products in their home market or in other markets in a way that does not comply with applicable local regulations, regulators could try to hold us responsible if they believe we facilitated or were otherwise responsible for the customer’s actions. While we take measures in an effort to protect us against these types of risks, we cannot ensure you that such measures would prevent us from becoming subject to any such claims.

We and our products are subject to extensive regulation, and the requirements to obtain regulatory approvals in the United States and other jurisdictions can be costly, time-consuming and unpredictable. If we or our partners are unable to obtain timely regulatory approval for our product candidates, our business may be substantially harmed.

Cytori Cell Therapy : Our Celution system family of products and components of the Stemsource cell banks, must receive regulatory clearances or approvals from the FDA and from foreign regulatory bodies prior to commercial sale in those jurisdictions. Our Cytori Cell Therapy platform, including the Celution device, Celase and Intravase reagents, and consumable kits, is subject to

stringent government regulation in the United States by the FDA under the Federal Food, Drug and Cosmetic Act, and by the EMA and other regulatory agencies outside of the United States under their respective regulatory reg imes.

The regulatory process for our cell therapy products 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, 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 can be no assurance 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. 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.

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.

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, as well as 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. While we believe that our current activities are in compliance with FDA regulations relating to marketing and promotion, if regulators were to determine that our commercialization efforts, or those of our distributors, collaborators or customers, involve improper marketing and promotion of our products in violation of FDA regulations, our business could be substantially negatively affected.

There can be no assurance 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. In addition, there can be no assurance that we will obtain regulatory approvals or clearances in all of the other 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.

Cytori Nanomedicines: The worldwide regulatory process for our Cytori Nanomedicines drug candidates can be lengthy and expensive, with no guarantee of approval.

Before any new drugs may be introduced to the U.S. market, the manufacturer generally must obtain FDA approval through either an abbreviated new drug application, or ANDA, process for generic drugs off patent that allow for bioequivalence to an existing reference listed drug, or RLD, or the lengthier new drug approval, or NDA, process, which typically requires multiple successful Phase III clinical trials to generate clinical data supportive of safety and efficacy along with extensive pharmacodynamic and pharmacokinetic preclinical testing to demonstrate safety. Our lead drug product under development (ATI-0918) is eligible ANDA process, while our ATI-1123 drug candidate is subject to the significantly lengthier NDA process. Approval of an ANDA could take four or more years from the time the process is initiated due to the requirement for clinical trials. NDA drugs could take significantly longer due to the additional preclinical requirements along with the typical requirement for two successful Phase III clinical studies.

In Europe, as in the United States, there are two regulatory steps to complete before a drug candidate is approved to be marketed in the European Union. These two steps are clinical trial application and marketing authorization application. Clinical trial applications are approved at the member state level, whereas marketing authorization applications are approved at both the member state and centralized levels. Both ATI-0918 and ATI-1123 will follow the centralized procedure for EMA regulatory approval. The centralized procedure allows the applicant to obtain a marketing authorization that is valid throughout the EU. Similar to the FDA process, the EMA centralized process requires bioequivalence data for generic drug candidates such as ATI-0918, and robust clinical data for non-generic drug candidates like ATI-01123 similar to clinical data required for NDA drug candidates.

There are numerous risks arising out of the regulation of our ATI-0918 and ATI-1123 drug candidates include the following:

- We can provide no assurances that our current and future oncology drugs will meet all of the stringent government regulation in the United States, by the FDA under the Federal Food, Drug and Cosmetic Act, and/or in international markets such as Europe, by the EMA under its Medicinal Products Directive, or Japan, by Japan's Pharmaceuticals and Medical Devices Agency and Ministry of Health, Labor and Welfare under the Japanese Pharmaceutical Affairs Law.

- We intend to seek regulatory of our ATI-0918 drug candidate via abbreviated approval processes referred to as bioequivalence or BE, approved under an abbreviated new drug application, or ANDA. There are no assurances that these abbreviated processes are or will be available in markets outside of the United States, or where available, that we will successfully obtain regulatory approvals via such abbreviated processes.

- It is required for ANDA and BE drug candidates that there is a reference listed drug, or RLD, with which the drug candidate must demonstrate equivalence. There are no assurances that the reference drug for ATI-0918 will be the same in all territories or countries, which could require different and unique BE clinical studies for some territories where we currently intend to commercialize ATI-0918. Changes in the RLD may result in the nullification of BE clinical studies and can result in significant delays in the regulatory process as BE clinical studies may need to be repeated for jurisdictions that no longer recognize the reference drug utilized in BE clinical studies.

- Our Cytori Nanomedicines drug candidates, if approved, will still be subject to post-market reporting requirements for deaths or serious injuries when the drug may have caused or contributed to the death or serious injury, or serious adverse events. There are no assurances that our drug products will not have safety or effectiveness problems occurring after the drugs reach the market. There are no assurances that regulatory authorities will not take steps to prevent or limit further marketing of the drug due to safety concerns.

- It is possible that the new legislation in our priority markets, such as the newly enacted CURES Act in the United States, will yield additional regulatory requirements for therapeutic drugs for our Cytori Nanomedicine drug candidates (the FDA's interpretation and implementation of the CURES Act has yet to be published).

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

Cytori Cell Therapy : Government regulations can change without notice. Given the fact that we operate 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.

Our ability to receive regulatory approvals for our Cytori Cell Therapy products and to sell into foreign markets is complex, due in part to by the nature of our Celution platform and manufacturing process. The platform consists of our Celution device that processes the patient's own adipose (fat) tissue to create a heterogeneous mixture of regenerative cells. In the United States, this heterogeneous mixture of cells is subject to classification as a drug, but the FDA has made the determination that our Cytori Cell Therapy will be regulated as a Class III PMA medical device. However, foreign regulatory bodies must assess our particular platform and manufacturing process to make their own determination whether our Cytori Cell Therapy product candidates should receive medical device or drug classifications. For example, the European Commission has granted orphan drug designation for the use of Cytori Cell Therapy (currently branded as Habeo Cell Therapy) in treatment of system sclerosis. The EMA has not made a determination whether it would classify Habeo Cell Therapy as an ATMP or a medical device. Though we believe that Habeo Cell Therapy will be classified by the EMA as an ATMP, we cannot guarantee that the EMA will not arrive at a different determination at such time that we ask a determination to be made. Regardless of the EMA's ultimate determination, we will also be required to comply with the particular regulatory requirements of each of the member states of the European Economic Area (comprised of 28 European Union, or EU, member states plus Iceland, Liechtenstein, and Norway) with respect to our cell therapy offerings, a process which we anticipate will require considerable time, effort and expense. We expect that regulatory bodies in other jurisdictions will engage in similar analyses of our Cytori Cell Therapy, and we cannot predict then outcomes of these analyses.

In Japan, the Japanese Diet recently passed the Act regarding Ensuring of Safety of Regenerative Medicine, or the Regenerative Medicine Law, and the revisions to the Pharmaceutical Affairs Law as applied to drugs, medical devices and regenerative medicine. The Regenerative Medicine Law initially caused some confusion for regenerative companies operating in Japan, but we believe that this law, as currently implemented, benefits Cytori and its customers by allowing an expedited path for our customers in Japan to obtain licenses under the Regenerative Medicine Law to treat patients with Cytori Cell Therapy. However, we cannot be certain that the Regenerative Medicine Law will not be repealed or that current interpretations and implementation of the Regenerative Medicine Law will not change in a manner adverse to our business. Further, we currently import and sell our products in Japan under Class I notifications that we obtained several years ago. However, at the request of Japanese regulators, we are in the process of obtaining Class III approvals for our Celution device and consumable kits. Though we are pursuing these Class III

approvals process without any anticipated interruption to our commercial activities, it is possible that other jurisdictions in which we currently sell may require similar heightened regulatory approvals but with potential restrictions on our ability to market and sell our Cytori Cell Therapy products in such t erritories during the application process and review period for the required regulatory approval(s).

Any regulatory review committees and advisory groups and any contemplated new guidelines may lengthen the regulatory review process, require us to perform additional studies, increase our development costs, lead to changes in regulatory positions and interpretations, delay or prevent approval and commercialization of our product candidates or lead to significant post-approval limitations or restrictions. As we advance our product candidates, we will be required to consult with these regulatory and advisory groups, and comply with applicable guidelines. If we fail to do so, we may be required to delay or discontinue development of our product candidates. Delay or failure to obtain, or unexpected costs in obtaining, the regulatory approval necessary to bring a product candidate to market could decrease our ability to generate sufficient revenue to maintain our business. Divergence in regulatory criteria for different regulatory agencies around the globe could result in the repeat of clinical studies and/or preclinical studies to satisfy local territory requirements, resulting in the repeating of studies and/or delays in the regulatory process. Some territories may require clinical data in their indigenous population, resulting in the repeat of clinical studies in whole or in part. Some territories may object to the formulation ingredients in the final finished product and may require reformulation to modify or remove objectionable components; resulting in delays in regulatory approvals. Such objectionable reformulations include, but are not limited to, human or animal components, BSE/TSE risks, banned packaging components, prohibited chemicals, banned substances, etc. There can be no assurances that FDA or foreign regulatory authorities will accept our pre-clinical and/or clinical data.

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 or other regulators regulate 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 the FDA's or other regulators' approach to the regulatory process will not deleteriously affect some or all of our products or product applications.

Cytori Nanomedicines: Our nanotechnology technology is also subject to government regulations that are subject to change. Our lead product, ATI-0918 is regulated under bioequivalence rules that rely on a reference listed drug, or RLD, for equivalence in the United States and other jurisdictions. Government agencies can change the reference listed drug or reference drug without notice. These changes in the RLD could invalidate clinical studies and require the initiation of new clinical studies for determining equivalence to a newly assigned RLD. Furthermore, bioequivalence studies may need to be repeated in certain foreign entities as some governments may require additional confirmatory studies in their patient populations. These additional requirements could result in additional clinical studies or delays in the regulatory process. Other risks with the RLD criteria are in the criteria for demonstrating bioequivalence. Bioequivalence criteria may not be identical in all geographical regions, resulting in the requirement for new bioequivalence studies to demonstrate equivalence to a more stringent standard. Additionally, bioequivalence criteria rely on the products being "off patent" in the territory. Patent expiration dates may vary in different regions which may result in bioequivalence regulatory pathways being delayed in some territories. Current regulatory pathways such as the abbreviated new drug application, or ANDA, pathway, of we are currently relying on, are subject to change and may cease to be viable regulatory pathways in the future.

Our pipeline oncology products, such as ATI-1123, are being developed under existing government criteria, which are subject to change in the future. Clinical and/or pre-clinical criteria in addition to cGMP manufacturing requirements may change and impose additional regulatory burdens. Clinical requirements are subject to change which may result in delays in completing the regulatory process. Divergence in regulatory criteria for different regulatory agencies around the globe could result in the repeat of clinical studies and/or preclinical studies to satisfy local jurisdictional requirements, which would significantly lengthen the regulatory process and increase uncertainty of outcome. Some jurisdictions may require clinical data in their indigenous population, resulting in the repeat of clinical studies in whole or in part. Some jurisdictions may object to the formulation ingredients in the final finished product and may require reformulation to modify or remove objectionable components; resulting in delays in regulatory approvals. Such objectionable reformulations include, but are not limited to, human or animal components, bovine spongiform encephalopathy/ transmissible spongiform encephalopathy risks, banned packaging components, prohibited chemicals, banned substances, etc. There can be no assurance that the FDA or foreign regulatory authorities will accept our pre-clinical and/or clinical data.

We may have difficulty obtaining appropriate and sufficient pricing and reimbursement for our cell therapy products.

New and emerging cell therapy and cell banking technologies, such as those provided by the Cytori Cell Therapy 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 reimbursem ent 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 at pricing that is profitable and that adequately compensates Cytori for its development costs, which would negatively impact our operating results.

Habeo Cell Therapy, our lead indication, is intended to treat hand manifestations of systemic scleroderma, which is a rare, or orphan, disease. As such, we anticipate that Habeo Cell Therapy will be priced to reflect its orphan status in our prior target markets for this indication. In the United States and in Europe, we anticipate that this pricing will be supported by Habeo Cell Therapy meeting primary endpoints from the STAR and SCLERADEC II clinical trials. Further, in Europe, we expect that Habeo Cell Therapy will be classified as an ATMP with orphan drug status, and if we are the first ATMP approved for this indication in Europe, we will receive certain benefits, including market exclusivity (subject to certain caveats). Status as an approved ATMP with orphan drug designation could provide us with a strong platform from which to seek higher reimbursement. However, the level of reimbursement Habeo Cell Therapy will receive will be directly related to the quantity and quality of clinical evidence reported by these STAR and SCLERADEC II clinical trials. It is possible that our clinical trial data are sufficient to support regulatory approval of Habeo Cell Therapy, but not sufficient to support pricing at a level that makes Habeo Cell Therapy attractive to potential partners or to make it economically viable for us to directly commercialize Habeo Cell Therapy. Further, if the STAR and SCLERADEC II clinical trials are not successful, we may not be in a position to seek regulatory approval at all, and we may be required to suspend or abandon our Habeo Cell Therapy commercialization efforts.

Our European managed access program for Habeo Cell Therapy may not be successful, which in turn could adversely affect our Habeo Cell Therapy commercialization efforts.

Our managed access program, or MAP (also known as early access program or named patient program), is intended to provide access in select countries across Europe, the Middle East and Africa, or EMEA, to our Habeo Cell Therapy for patients with impaired hand function due to scleroderma in advance of anticipated commercialization of Habeo Cell Therapy. Our MAP will has faced and will continue to face numerous challenges, including the following:

- In most countries, patient access to Habeo Cell therapy will be provided on an ‘individual’ patient basis where physicians will make an application to their Competent Authority in each country on a patient-by-patient basis. This imposes a significant administrative burden on participating physicians, and requires them to navigate a process with which they are oftentimes unfamiliar.

- In certain countries, hospitals and/or patients will be required to pay a portion of our procedure fees under our MAP. This payment obligation may limit the number of hospitals and patients who can afford to participate in our MAP.

- Because Cytori is targeting an orphan indication in scleroderma where there is an established need for effective therapies, regulators in Europe have been willing to allow an approval trial based on limited data from the 12-patient, investigator initiated SCLERADEC I pilot trial. The lack of robust Phase II clinical data has also proven to be a hurdle to MAP acceptance. We believe that positive results from the STAR clinical trial and/or SCLERADEC II clinical trial will help drive interest in our MAP, but there is no guarantee that either trial will achieve positive results.

Orphan drug designation may not ensure that we will enjoy market exclusivity in a particular market, and if we fail to obtain or maintain orphan drug designation or other regulatory exclusivity for some of our product candidates, our competitive position would be harmed.

A product candidate that receives orphan drug designation can benefit from potential commercial benefits following approval. Under the U.S. Orphan Drug Act, the FDA may designate a product candidate as an orphan drug if it is intended to treat a rare disease or condition, defined as affecting a patient population of fewer than 200,000 in the United States, or a patient population greater than 200,000 in the United States where there is no reasonable expectation that the cost of developing the drug will be recovered from sales in the United States. In the European Union, or EU, the EMA’s Committee for Orphan Medicinal Products, or COMP, grants orphan drug designation to promote the development of products that are intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition affecting not more than 10,000 persons in the EU. Currently, this designation provides market exclusivity in the U.S. and the European Union for seven years and ten years, respectively, if a product is the first such product approved for such orphan indication. This market exclusivity does not, however, pertain to indications other than those for which the drug was specifically designated in the approval, nor does it prevent other types of drugs from receiving orphan designations or approvals in these same indications. Further, even after an orphan drug is approved, the FDA can subsequently approve a drug with similar chemical structure for the same condition if the FDA concludes that the new drug is clinically superior to the orphan product or a market shortage occurs. In the EU, orphan exclusivity may be reduced to six years if the drug no longer satisfies the original designation criteria or can be lost altogether if the marketing authorization holder consents to a second orphan

drug application or cannot supply enough drug, or when a sec ond applicant demonstrates its drug is “clinically superior” to the original orphan drug.

In April 2016, the European Commission, acting on the positive recommendation from the COMP, issued orphan drug designation to a broad range of Cytori Cell Therapy formulations when used for the treatment of systemic sclerosis. In November 2016, the U.S. FDA Office of Orphan Products Development granted us an orphan drug designation for cryopreserved or centrally processed ECCS-50 (Habeo) for scleroderma. Either or both of such orphan drug designations may fail to result in or maintain orphan drug exclusivity upon approval, which would harm our competitive position.

We generate 71% of our sales revenues from Japan, with 76% of those revenues generated by sales to four customers and 49% of these revenues generated by sales to one customer. This concentration of sales in one territory, and to one small group of customers in Japan, makes us vulnerable to the loss of our key customers and to adverse changes in the Japanese market.

In 2016, we generated approximately $3.3 million in sales revenues in Japan, representing 71% of our overall global sales revenues. 76% of the Japan sales revenues were from four key customers, and 49% of these sales revenues were from one key customer. We expect a relatively small number of customers to account for a majority of our revenues for the foreseeable future. This concentration of sales in one country, and in a small subset of customers within such country, represents a risk to our business. Our existing business in Japan, and our prospects for further growth of product sales in Japan, are subject to a number of risks, including the following:

- Existing laws and regulations pertaining to our business, including the Act regarding Ensuring of Safety of Regenerative Medicine, or the Regenerative Medicine Law, passed in 2013, may be repealed, or implemented, amended or superseded, in a manner that is adverse to our business;
- Macroeconomic conditions in Japan may deteriorate, thus weakening demand for our cell therapy products, which are used in self-pay procedures in Japan;
- Japanese regulatory authorities may take unexpected actions with respect to our cell therapy products, including with respect to required regulatory clearances and approvals in Japan, that could cause us to suspend or curtail our cell therapy sales operations in Japan;
- Quality issues could arise, requiring product recalls or other actions that could cause us reputational damage and lost sales;
- One or more of our key customers in Japan may decide to acquire competitive products, adopt other technological or therapeutics approaches to the conditions they treat, or otherwise reduce or cease their purchases of our products;
- Our Cytori Cell Therapy product trials may not achieve statistical significance and thus could diminish the perceived value and efficacy of our technology; and
- Our relatively small team in Japan may not be able to manage the needs of a growing business, and we may not able to hire and retain existing or new employees necessary to maintain and expand our business in Japan.

Further, a loss of one or more of our key customers, a dispute or disagreement with one of these key customers, a significant deterioration in the financial condition of one of these key customers, or a significant reduction in the amount of our products ordered by any key customer could adversely affect our revenue, results of operations and cash flows.

If we experience an interruption in supply from a material sole source supplier, our business may be harmed

We acquire some our components and other raw materials from sole source suppliers. If there is an interruption in supply of our raw materials from a sole source supplier, there can be no assurance that we will be able to obtain adequate quantities of the raw materials within a reasonable time or at commercially reasonable prices. Interruptions in supplies due to pricing, timing, availability or other issues with our sole source suppliers could have a negative impact on our ability to manufacture products and product candidates, which in turn could adversely affect commercial sales of our commercially available Cytori Cell Therapy products, delay our development and commercialization efforts and cause us to potentially breach our supply or other obligations under our agreements with certain other counterparties.

We source our Celase and Intravase reagents, which are used to process patients' autologous adipose (fat) tissue, under an exclusive manufacturing arrangement with Roche Diagnostics Corporation, or Roche. We do not have a second qualified supplier to manufacture these reagents, a nd we estimate that it would take approximately two years to qualify another manufacturing source for our reagents. Though we have significant inventory related to these reagents on hand which we believe are sufficient to satisfy currently anticipated int ernal and customer demand for at least the next three years, if our agreement with Roche were to terminate or if Roche were otherwise unable to manufacture sufficient volumes of the reagents to meet our customer demand, our business could be materially and adversely affected.

We are dependent on sole source suppliers to manufacture the API (active pharmaceutical ingredient) and certain other components of our Cytori Nanomedicines drug candidates. There are no assurances that these sole source suppliers will enter into supply agreements with us to provide contractual assurance to us around supply and pricing. Regardless whether a sole source supplier enters into a written supply arrangement with us, such supplier could still delay, suspend or terminate supply of raw materials to us for a number of reasons, including manufacturing or quality issues, payment disputes with us, bankruptcy or insolvency, or other occurrences.

If a sole source supplier ceases supply of raw materials necessary there is no guarantee that we will find an alternative supplier for the necessary raw materials on terms acceptable to us, or at all. Further the qualification process for a new vendor could take months or even years, and any such day in qualification could significantly harm our business.

We may engage in strategic transactions that could impact our liquidity, increase our expenses and present significant distractions to our management.

From time to time we may consider strategic transactions, such as acquisitions of companies, asset purchases and out-licensing or in-licensing of products, product candidates or technologies. For example, in February 2017, we acquired intellectual property and a portfolio of investigational oncology therapies from Azaya Therapeutics. This acquisition materially impacted our liquidity and will materially increase our expenses (including a substantial increase in employee headcount). Further, growth of the Cytori Nanomedicine business will require significant management time and attention. Additional potential transactions that we may consider include a variety of different business arrangements, including spin-offs, strategic partnerships, joint ventures, restructurings, divestitures, business combinations and investments. Any such transaction may require us to incur non-recurring or other charges, may increase our near and long-term expenditures and may pose significant integration challenges or disrupt our management or business, which could adversely affect our operations and financial results. For example, these transactions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention in order to develop acquired products, product candidates or technologies;
- incurrence of substantial debt or dilutive issuances of equity securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- write-downs of assets or goodwill or impairment charges;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

Accordingly, although there can be no assurance that we will undertake or successfully complete any additional transactions of the nature described above, any additional transactions that we do complete could have a material adverse effect on our business, results of operations, financial condition and prospects.

We are exposed to risks related to our international operations, and failure to manage these risks m ay adversely affect our operating results and financial condition.

We have operations in several regions around the world, including the United States, Japan, the Asia-Pacific region and Europe. Our global operations may be subject to risks that 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, among others:

- political unrest, terrorism and economic or financial instability;
- unexpected changes and uncertainty in regulatory requirements;
- 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; and
- 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.

We must maintain quality assurance certification and manufacturing approvals.

The manufacture of our products is, and the manufacture of any future drug and/or cell-related therapeutic products would be, subject to periodic inspection by regulatory authorities and distribution partners. The manufacture of drugs and devices products for human use is subject to regulation and inspection from time to time by the FDA for compliance with the FDA's cGMP (current good manufacturing practices), 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 assurance 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 that 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.

BARDA may terminate or suspe nd its agreement with us, or suspend, delay or reduce its funding of our development hereunder, which could delay and/or adversely affect our business and our ability to further develop our Celution System.

In September 2012, we were awarded a contract, or the BARDA Agreement, with the Biomedical Advanced Research and Development Authority, or BARDA, a division of the U.S. Department of Health and Human Services. The objective of the BARDA Agreement is to develop our cell therapy technology for use as a new countermeasure for a combined injury involving thermal burn and radiation exposure that would be employed following a mass-casualty event. The original total value of the cost-plus-fixed-fee BARDA Agreement was up to an aggregate of $106 million, which aggregate potential value has decreased somewhat as we and BARDA have gained more insight into anticipated and actual budgets for different phases of our development work.

We have received over $20 million in cost-plus-fixed-fee funding from BARDA to fund our preclinical research and development of Cytori Cell Therapy for thermal burn, or DCCT-10, and to fund development of our Celution cell processing system. There are additional contract options under the BARDA Agreement to provide over $80 million in additional funds to:

- conduct a pilot clinical study, and related regulatory and other tasks;
- conduct a pivotal clinical trial, and related clinical, regulatory, and other activities, with the objective of obtaining FDA approval for intravenous use of DCCT-10 in thermal burn injury; and
- conduct of clinical, regulatory and other tasks required to develop and obtain FDA clearance for other characteristics suitable for use in thermal burn injury following a mass casualty event.

The current contract modification to the BARDA Agreement executed by us and BARDA in September 2016 will expire in April 2017. We are in active discussions with BARDA regarding BARDA's continued funding of our DCCT-10 development program, but there is no guarantee that we will reach agreement with BARDA regarding an extension of our existing contract modification, execution of a new contract modification, or execution of a new agreement. If we are unable to enter into a new contract or contract modification with BARDA, we may cease to receive funds from BARDA as soon April 2017. If this occurs, we would likely severely curtail, suspend or even terminate our DCCT-10 program, and our business would be harmed.

Further should we cease to receive BARDA funding, certain of our product development efforts, including development of our next generation Celution devices, could be harmed.

Further, we are currently in the process of seeking FDA approval of our IDE application for our proposed RELIEF Phase I clinical trial to assess the safety and feasibility of intravenous administration of DCCT-10 as a thermal burn countermeasure. If the FDA approves our IDE application, then BARDA's approval and agreement to fund the trial will be required to proceed. There can be no assurance that BARDA will agree to fund the entire cost of the trial. If BARDA declines to fund the full costs of the trial, we may be required to terminate our DCCT-10 development program.

BARDA may suspend or terminate the BARDA Agreement, or decline to enter into a new agreement upon termination of the BARDA Agreement, for a number of reasons, including our failure to achieve key objectives or milestones or failure 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 comply with BARDA's operating procedures and processes, achieve the necessary clinical milestones or whether we will be able to successfully develop our DCCT-10 product candidate under the contract.

Our contract with BARDA will expire in September 2017. Though we intend to negotiate a new agreement with BARDA, there is no guarantee that we will be able to do so. Any new agreement with BARDA may be on terms less favorable to us than our current agreement.

Our current BARDA Agreement will expire in September 2017, and there is no guarantee that we will execute a new contract with BARDA. We anticipate that if the FDA approves our RELIEF pilot trial IDE application, and if BARDA agrees to fund this trial, that any BARDA funding for this trial would be awarded under our existing contract. However, we do not anticipate that any additional funds will be awarded to us under the current BARDA Agreement. Thus, it is likely that our current BARDA Agreement will expire with only approximately $30 million of the total original contract value of $106 million having been awarded to us. Any subsequent awards for a pivotal clinical trial of our DCCT-10 therapeutic, for regulatory activities in anticipation of FDA approval, and for other related development and commercialization activities, would be granted (if at all) under a new contract with BARDA. There can be no guarantee that BARDA and we will enter into a new agreement on terms acceptable to us, or at all. If we do enter into a new contract with BARDA, it might provide for lower funding caps and other material terms less favorable to us than the current BARDA Agreement. Further, we would expect that any contract with BARDA would be unlikely to fund the continued development of our latest generation Celution systems. If we do not enter into a new contract with BARDA when our current BARA Agreement

expires that provides for continued funding of our DCCT-10 development eff orts, we will likely be required to suspend or terminate our thermal burn program.

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 U.S. Government.

If we are unable to identify, hire and/or retain key personnel, we may not be able to sustain or grow our business.

Our ability to operate successfully and manage our potential future growth depends significantly upon our ability to attract, retain, and motivate highly skilled and qualified research, technical, clinical, regulatory, sales, marketing, managerial and financial

personnel. We compete for talent with numerous companies, as well as universities and non-profit research organizations. In the near term, we intend to hire a significant number of scientists, quality and regulatory personnel, and other technical s taff with the requisite expertise to support and expand our Cytori Nanomedicines business. The manufacturing of these oncology drug assets is a highly complex process that requires significant experience and know-how. If we are unable to attract personnel with the necessary skills and experience to reestablish and expand our Cytori Nanomedicines business, which is currently conducted out of our San Antonio, Texas facility, our business could be harmed.

Our future success also depends on the personal efforts and abilities of the principal members of our senior management and scientific staff to provide strategic direction, manage our operations, and maintain a cohesive and stable environment. In particular, we are highly dependent on our executive officers, especially Marc Hedrick, M.D., our Chief Executive Officer, Tiago Girão, our Chief Financial Officer, and John Harris, our Vice President and General Manager of Cell Therapy. Given their leadership, extensive technical, scientific and financial expertise and management and operational experience, these individuals would be difficult to replace. Consequently, the loss of services of one or more of these named individuals could result in product development delays or the failure of our collaborations with current and future collaborators, which, in turn, may hurt our ability to develop and commercialize products and generate revenues. We have not entered into any employment agreements with our executive officers or key personnel, nor do we maintain key man life insurance on the lives of any of the members of our senior management. Although we have a stock option plan pursuant to which we provide our executive officers with various economic incentives to remain employed with us, these incentives may not be sufficient to retain them. The loss of key personnel for any reason or our inability to hire, retain, and motivate additional qualified personnel in the future could prevent us from sustaining or growing our business.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability if our insurance coverage for those claims is inadequate.

The commercial use of our products and clinical use of our products and product candidates expose us to the risk of product liability claims. This risk exists even if a product or product candidate is approved for commercial sale by applicable regulatory authorities and manufactured in facilities regulated by such authorities. Our products and product candidates are designed to affect important bodily functions and processes. Any side effects, manufacturing defects, misuse or abuse associated with our products or our product candidates could result in injury to a patient or even death. For example, ATI-0918 is cytotoxic, or toxic to living cells, and, if incorrectly or defectively manufactured or labeled, or incorrectly dosed or otherwise used in a manner not contemplated by its label, could result in patient harm and even death. In addition, a liability claim may be brought against us even if our products or product candidates merely appear to have caused an injury.

Product liability claims may be brought against us by consumers, health care providers, pharmaceutical companies or others selling or otherwise coming into contact with our products or product candidates, if approved, among others. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- the inability to commercialize our product candidates;
- decreased demand for our product candidates, if approved;
- impairment of our business reputation;
- product recall or withdrawal from the market;
- withdrawal of clinical trial participants;
- costs of related litigation;
- distraction of management’s attention from our primary business;
- substantial monetary awards to patients or other claimants; or
- loss of revenues.

We have obtained product liability insurance coverage for commercial product sales and clinical trials with a $10 million per occurrence and annual aggregate coverage limit. Our insurance coverage may not be sufficient to cover all of our product liability related expenses or losses and may not cover us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost, in sufficient amounts or upon adequate terms to protect us against losses due to product liability. If we determine that it is prudent to increase our

product liability coverage, we may be unable to obtain this increased product liability insurance on commerciall y reasonable terms or at all. Large judgments have been awarded in class action or individual lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock pr ice to decline and, if judgments exceed our insurance coverage, could decrease our cash and have a material adverse effect on our business, results of operations, financial condition and prospects.

Our employees, principal investigators, consultants and collaboration partners may engage in misconduct or other improper activities, including noncompliance with laws and regulatory standards and requirements and insider trading.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include failures to comply with FDA regulations, to provide accurate information to the FDA, to comply with manufacturing standards we have established, to comply with federal and state healthcare fraud and abuse laws and regulations, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations restrict or prohibit a wide range of activity relating to pricing, discounting, marketing and promotion, sales commissions, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation, or, given we are a listed company the United States, breach of insider trading laws. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

Our operations are subject to anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and other anticorruption laws that apply in countries where we do business.

Anti-corruption laws generally prohibit us and our employees and intermediaries from bribing, being bribed or making other prohibited payments to government officials or other persons to obtain or retain business or gain some other business advantage. We participate in collaborations and relationships with third parties whose actions could potentially subject us to liability under these anti-corruption laws. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

There is no assurance that we will be completely effective in ensuring our compliance with all applicable anti-corruption laws or other laws including trade related laws. If we are not in compliance with these laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, and legal expenses, which could have an adverse impact on our business, financial condition, results of operations and liquidity. Likewise, any investigation of any potential violations of these laws by respective government bodies could also have an adverse impact on our reputation, our business, results of operations and financial condition.

A failure to adequately protect private health information could result in severe harm to our reputation and subject us to significant liabilities, each of which could have a material adverse effect on our business.

Throughout the clinical trial process, we may obtain the private health information of our trial subjects. There are a number of state, federal and international laws protecting the privacy and security of health information and personal data. As part of the American Recovery and Reinvestment Act 2009, or ARRA, Congress amended the privacy and security provisions of the Healthcare Information Portability and Accountability Act, or HIPAA. HIPAA imposes limitations on the use and disclosure of an individual's healthcare information by healthcare providers conducting certain electronic transactions, healthcare clearinghouses, and health insurance plans, collectively referred to as covered entities. The HIPAA amendments also impose compliance obligations and corresponding penalties for non-compliance on certain individuals and entities that provide services to or perform certain functions on behalf of healthcare providers and other covered entities involving the use or disclosure of individually identifiable health information, collectively referred to as business associates. ARRA also made significant increases in the penalties for improper use or disclosure of an individual's health information under HIPAA and extended enforcement authority to state attorneys general. The amendments also create notification requirements to federal regulators, and in some cases local and national media, for individuals whose health information has been inappropriately accessed or disclosed. Notification is not required under HIPAA if the health information that is improperly used or disclosed is deemed secured in accordance with certain encryption or other standards developed by the U.S. Department of Health and Human Services, or HHS. Most states have laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual

terms to ensure ongoing protection of personal information. Activities outside of the U.S. implicate local and national data protection standards, impose additional compliance requirements and generate additional risks of enforcement for non-compliance. The EU's Data Protection Directive, Canada's Personal Information Protection and Electronic Documents Act and other data protection, privacy and similar na tional, state/provincial and local laws may also restrict the access, use and disclosure of patient health information abroad. We may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and dat a security laws, to protect against security breaches and hackers or to alleviate problems caused by such breaches.

We and our collaborators must comply with environmental laws and regulations, including those pertaining to use of hazardous and biological materials in our business, and failure to comply with these laws and regulations could expose us to significant liabilities.

We and our collaborators are subject to various federal, state and local environmental laws, rules and regulations, including those relating to discharge of materials into the air, water and ground, those relating to manufacturing, storage, use, transportation and disposal of hazardous and biological materials, and those relating to the health and safety of employees with respect to laboratory activities required for the development of our products and activities. In particular, our Cytori Nanomedicine products and processes involve the controlled storage, use and disposal of certain cytotoxic, or toxic to living cells, materials. Even if we and these suppliers and collaborators comply with the standards prescribed by law and regulation, the risk of accidental contamination or injury from hazardous materials, or other violations of applicable environmental laws, rules or regulations cannot be completely eliminated. In the event of any violation of such laws, rules or regulations, we could be held liable for any damages that result, and any liability could exceed the limits or fall outside the coverage of any insurance we may obtain and could exceed our financial resources. We may not be able to maintain insurance on acceptable terms, or at all. We may incur significant costs in complying with environmental laws, rules and regulations.

Increased information technology security threats and more sophisticated and targeted computer crime could pose a risk to our systems, networks, and products.

Increased global information technology security threats and more sophisticated and targeted computer crime pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data and communications. While we attempt to mitigate these risks by employing a number of measures, including employee refreshers, monitoring of our networks and systems, and maintenance of backup and protective systems, our systems, networks and products remain potentially vulnerable to advanced persistent threats. Depending on their nature and scope, such threats could potentially lead to the compromising of confidential information and communications, improper use of our systems and networks, manipulation and destruction of data, defective products, production downtimes and operational disruptions, which in turn could adversely affect our reputation, competitiveness and results of operations.

The results of the United Kingdom's referendum on withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our business.

In June 2016, a majority of voters in the United Kingdom elected to withdraw from the European Union in a national referendum. The referendum was advisory, and the terms of any withdrawal are subject to a negotiation period that could last at least two years after the government of the United Kingdom formally initiates a withdrawal process. Nevertheless, the referendum has created significant uncertainty about the future relationship between the United Kingdom and the European Union, including with respect to the laws and regulations that will apply as the United Kingdom determines which European Union laws to replace or replicate in the event of a withdrawal. The referendum has also given rise to calls for the governments of other European Union member states to consider withdrawal. These developments, or the perception that any of them could occur, have had and may continue to have a material adverse effect on global economic conditions and the stability of global financial markets, and may significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Any of these factors could depress economic activity and restrict our access to capital, which could have a material adverse effect on our business, financial condition and results of operations and reduce the price of our securities.

Risks Related to our Financial Position and Capital Requirements

The statements in this section, as well as statements described elsewhere in this annual report, or in other SEC filings, describe risks that could materially and adversely affect our business, financial condition and results of operations, which could also cause the trading price of our equity securities to decline. These risks are not the only risks that we face. Our business, financial condition and results of operations could also be affected by additional factors that are not presently known to us or that we currently consider to be immaterial to our operations

We have incurred losses since inception, we expect to incur significant net losses in the foreseeable future and we may never become profitable.

We have almost always had negative cash flows from operations and have incurred net operating losses each year since we started business. For the years ended December 31, 2016 and 2015, we incurred net loss of $22.0 million and $19.4 million, respectively, our net cash used in operating activities was $19.5 million and $20.5 million, respectively, and, at December 31, 2016, our accumulated deficit was $379.1 million. We expect to continue to incur net losses and negative cash flow from operating activities for at least the next year. As our focus on development of Cytori Cell Therapy, the Celution system platform and development of therapeutic applications for Cytori Cell Therapy has increased, losses have resulted primarily from expenses associated with research and development and clinical trial-related activities, as well as general and administrative expenses. While we have implemented and continue to implement cost reduction measures where possible, we nonetheless expect to continue operating in a loss position on a consolidated basis and expect that recurring operating expenses will be at even higher levels for at least the next year to perform clinical trial and other development activities for our Cytori Cell Therapy and Cytori Nanomedicines products and product candidates, including additional pre-clinical research, clinical trial-related activities, pre-commercialization activities (including regulatory and reimbursement analysis and market research), and marketing.

Our ability to generate sufficient revenues from any of our products, product candidates or technologies to achieve profitability will depend on a number of factors including, but not limited to:

- our ability to manufacture, test and validate our product candidates in compliance with applicable laws and as required for submission to applicable regulatory bodies, including manufacturing, testing and validation of our ATI-0918 drug candidate;
- our or our partners' ability to successfully complete clinical trials of our product candidates;
- our ability to obtain necessary regulatory approvals for our product candidates;
- our or our partners' ability to negotiate and receive favorable reimbursement for our product candidates, including for our product candidates that have been granted or may be granted orphan drug status or otherwise command currently anticipated pricing levels;
- our ability to negotiate favorable arrangements with third parties to help finance the development of, and market and distribute, our products and product candidates; and
- the degree to which our approved products are accepted in the marketplace.

Because of the numerous risks and uncertainties associated with our commercialization and product development efforts, we are unable to predict the extent of our future losses or when or if we will become profitable and it is possible we will never become profitable. If we do not generate significant sales from any of our product candidates that may receive regulatory approval, there would likely be a material adverse effect on our business, results of operations, financial condition and prospects which could result in our inability to continue operations.

We will need substantial additional funding to develop our products and for our future operations. If we are unable to obtain the funds necessary to do so, we may be required to delay, scale back or eliminate our product development activities or may be unable to continue our business.

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, including our continuing substantial research and development expenses. 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 near future. Although it is difficult to predict future liquidity requirements, we believe that our $12.6 million in cash and cash equivalents on hand as of December 31, 2016 will be sufficient to fund our currently contemplated operations at least through June 2017. Our future capital requirements will depend on many factors, including:

- our ability to raise capital to fund our operations on terms acceptable to us, or at all;
- our perceived capital needs with respect to development of our Cytori Cell Therapy and Cytori Nanomedicines development programs, and any delays in, adverse events of, and excessive costs of such programs beyond what we currently anticipate;
- our ability to establish and maintain collaborative and other arrangements with third parties to assist in bringing our products to market and the cost of such arrangements at the time;

- costs associated with the integration and operation of our newly acquired Cytori Nanomedicine business, including hiring of as many as 20 or more new employees to operate the Cytori Nanomedicine business, and costs of validation, requalification and recommencement of the Cytori Nanomedicine manufacturing operations at our San Antonio, Texas facility;

- the cost of manufacturing our product candidates, including compliance with good manufacturing practices, or GMP, applicable to our product candidates;

- expenses related to the establishment of sales and marketing capabilities for product candidates awaiting approval or products that have been approved;

- the level of our sales and marketing expenses;

- competing technological and market developments; and

- our ability to introduce and sell new products.

We have secured capital historically from grant revenues, collaboration proceeds, and debt and equity offerings. We will need to secure substantial additional capital to fund our future operations. We cannot be certain that additional capital will be available on terms acceptable to us, or at all. Our ability to raise capital was adversely affected when the FDA put a hold on our ATHENA cardiac trials in mid-2014, which had an adverse impact to stock price performance and our corresponding ability to restructure our debt. More recently, a continued downward trend in our stock price resulting from a number of factors, including (i) general economic and industry conditions, (ii) challenges faced by the regenerative medicine industry as a whole, (iii) the market's unfavorable view of certain of our recent equity financings conducted in 2014 and 2015 (which financings were priced at a discount to market and included 100% warrant coverage), (iv) market concerns regarding our continued need for capital (and the effects of any future capital raising transactions we may consummate) (v) market perceptions of our ATHENA and ACT-OA clinical trial data; and (vi) our recent NASDAQ Stock Market LLC, or Nasdaq, listing deficiency issues and resultant 1-for-15 reverse stock split, have made it more difficult to procure additional capital on terms reasonably acceptable to us. Though our recent acquisition of the Cytori Nanomedicine business from Azaya Therapeutics, including our ATI-0918 and ATI-1123 drug candidates, appear to have been viewed favorably by our investors and the marketplace, we cannot assure you that this acquisition will not ultimately be viewed negatively and thus further hamper our efforts to attract additional capital. If we are unsuccessful in our efforts to raise any such additional capital, we may be required to take actions that could materially and adversely harm our business, including a possible significant reduction in our research, development and administrative operations (including reduction of our employee base), surrendering of our rights to some technologies or product opportunities, delaying of our clinical trials or regulatory and reimbursement efforts, or curtailing of or even ceasing operations.

Our financing plans include pursuing additional cash through use of our at-the-market, or ATM, offering program, or ATM, strategic corporate partnerships, licensing and sales of equity. In addition, in December 2016, we entered into a purchase agreement, or the Lincoln Park Purchase Agreement, with Lincoln Park Capital Fund, LLC, or Lincoln Park, pursuant to which we may direct Lincoln Park to purchase up to $20.0 million in shares of our common stock from time to time over a 30-month period, commencing upon the satisfaction of certain conditions, including that a registration statement be declared effective by the SEC. 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 or from other sou rces or on terms acceptable to us. In addition, under current SEC regulations, at any time during which the aggregate market value of our common stock held by non-affiliates, or public float, is less than $75.0 million, the amount we can raise through primary public offerings of securities in any twelve-month period using shelf registration statements, including sales under our ATM offering program, is limited to an aggregate of one-third of our public float. As of December 31, 2016, our public float was 21.5 million shares, the value of which was $32.5 million based upon the closing price of our common stock of $1.51 on such date. The value of one-third of our public float calculated on the same basis was approximately $11.0 million.

Further, our Loan and Security Agreement with Oxford Finance, LLC, or Oxford, as further described below, requires us to maintain a minimum of $5.0 million in unrestricted cash and cash equivalents on hand to avoid an event of default under the Loan and Security Agreement. Based on our cash and cash equivalents on hand of approximately $12.6 million at December 31, 2016, and our obligation to make payments of principal of $590,000 plus accrued interest in monthly installments, we estimate that we must raise additional capital and/or obtain a waiver or restructure the Loan and Security Agreement on or before May 2017 to avoid defaulting under our $5 million minimum cash/cash equivalents covenant. If we are unable to avoid an event of default under the Loan and Security Agreement, our business could be severely harmed. See the Risk Factor below regarding the Loan and Security Agreement.

In addition to the funding sources previously mentioned, we continue to seek additional capital through product revenues and state and federal development programs, including additional funding opportunities though our current BARDA contract.

Our level of indebtedness, and covenant restrictions under such indebtedness, could adversely affect our operations and liquidity.

Under our Loan and Security Agreement with Oxford, as collateral agent and lender, Oxford made a term loan to us in an aggregate principal amount of $17,700,000, or the Term Loan, subject to the terms and conditions set forth in the Loan and Security Agreement.

The Term Loan accrues interest at a floating rate equal to the three-month LIBOR rate (with a floor of 1.00%) plus 7.95% per annum. Prior to January 2017, we made interest-only payments on the Term Loan. However, as of January 2017, we are required to make payments of principal (in the amount of $590,000 per month) and accrued interest in equal monthly installments of approximately $725,000 to amortize the Term Loan through June 1, 2019, the maturity date. All unpaid principal and accrued and unpaid interest with respect to the Term Loan is due and payable in full on June 1, 2019.

As security for our obligations under the Loan and Security Agreement, we granted a security interest in substantially all of our existing and after-acquired assets, subject to certain exceptions set forth in the Loan and Security Agreement and excluding our intellectual property assets, which are subject to a negative pledge by us. If we are unable to discharge these obligations, Oxford could foreclose on these assets, which would, at a minimum, have a severe material effect on our ability to operate our business.

Our indebtedness to Oxford could adversely affect our operations and liquidity, by, among other things:

- causing us to use a larger portion of our cash flow to fund interest and principal payments, reducing the availability of cash to fund working capital and capital expenditures and other business activities;
- making it more difficult for us to take advantage of significant business opportunities, such as acquisition opportunities, and to react to changes in market or industry conditions; and
- limiting our ability to borrow additional monies in the future to fund working capital and capital expenditures and for other general corporate purposes.

The Loan and Security Agreement requires us to maintain at least $5 million in unrestricted cash and/or cash equivalents and includes certain reporting and other covenants, that, among other things, restrict our ability to (i) dispose of assets, (ii) change the business we conduct, (iii) make acquisitions, (iv) engage in mergers or consolidations, (v) incur additional indebtedness, (vi) create liens on assets, (vii) maintain any collateral account, (viii) pay dividends, (ix) make investments, loans or advances, (x) engage in certain transactions with affiliates, and (xi) prepay certain other indebtedness or amend other financing arrangements. If we fail to comply with any of these covenants or restrictions, such failure may result in an event of default, which if not cured or waived, could result in Oxford causing the outstanding loan amount ($17.7 million as of December 31, 2016) to become immediately due and payable. If the maturity of our indebtedness is accelerated, we may not have, or be able to timely procure, sufficient cash resources to satisfy our debt obligations, and such acceleration would adversely affect our business and financial condition.

In addition, our indebtedness under the Loan and Security Agreement is secured by a security interest in substantially all of our existing and after-acquired assets, excluding our intellectual property assets (which are subject to a negative pledge), and therefore, if we are unable to repay such indebtedness, Oxford could foreclose on these assets, which would, at a minimum, have a severe material effect on our ability to operate our business.

The report of our independent registered public accounting firm contains an emphasis paragraph regarding the substantial doubt about our ability to continue as a "going concern."

The audit report of our independent registered public accounting firm covering the December 31, 2016 consolidated financial statements contains an explanatory paragraph that states that our recurring losses from operations, liquidity position, and debt service requirements raises substantial doubt about our ability to continue as a going concern. This going concern opinion could materially limit our ability to raise additional funds through the issuance of new debt or equity securities or otherwise. Future reports on our financial statements may also include an explanatory paragraph with respect to our ability to continue as a going concern. To date, our operating losses have been funded primarily from outside sources of invested capital and gross profits. 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. However, no assurance can be given that additional capital will be available when required or on terms acceptable to us. If we are unsuccessful in our efforts to raise any such additional capital, we would be required to take actions that could materially and adversely affect our business, including significant reductions in our research, development and administrative operations (including reduction of our employee base), possible surrender or other disposition of our rights to some technologies or product opportunities, delaying of our clinical trials or curtailing or ceasing operations . We also cannot give assurance that we will achieve sufficient revenues in the future

to achieve profitability and cash flow positive operations to allow us to continue as a going concern. The perception that we may not be able to continue as a going concern may cause third parties to choose not to deal with us due to concerns about our ability to meet our contractual obligations, which could have a material adverse effect on our business .

We may not be able to access the full amounts available under the Lincoln Park Purchase Agreement, which could prevent us from accessing the capital we need to continue our operations, which could have an adverse effect on our business.

In December 2016, we entered into the Lincoln Park Purchase Agreement, pursuant to which we may direct Lincoln Park to purchase up to $20.0 million of shares of our common stock from time to time over a 30-month period, commencing upon the satisfaction of certain conditions, including that a registration statement be declared effective by the SEC. Thereafter, on any trading day selected by us, we may sell shares of common stock to Lincoln Park in amounts up to 100,000 shares per regular sale (such purchases, Regular Purchases) up to the aggregate commitment of $20.0 million. If the market price of our common stock is not below $2.00 per share on the purchase date, then the Regular Purchase amount may be increased to 150,000 shares. If the market price is not below $3.00 per share on the purchase date, then the Regular Purchase amount may be increased to 300,000 shares. Although there are no upper limits on the per share price Lincoln Park may pay to purchase our common stock, we may not sell more than $1.0 million in shares of common stock to Lincoln Park per any individual Regular Purchase. The purchase price of Regular Purchases will be based on the prevailing market prices of shares of our common stock, which shall be equal to the lesser of the lowest sale price of the common shares during the purchase date and the average of the three lowest closing sale prices of the common shares during the ten business days prior to the purchase date.

In addition to Regular Purchases, we may in our sole discretion direct Lincoln Park on each purchase date to make accelerated purchases on the following business day up to the lesser of (i) three times the number of shares purchased pursuant to such Regular Purchase or (ii) 30% of the trading volume on the accelerated purchase date at a purchase price equal to the lesser of (i) the closing sale price on the accelerated purchase date and (ii) 97% of the accelerated purchase date's volume weighted average price (such purchases, Accelerated Purchases). We cannot submit an Accelerated Purchase notice if the market price of our common stock is below $1.00.

In addition to Regular Purchases and Accelerated Purchases described above, we may also direct Lincoln Park, on any business day that the closing price of our common stock is not below $1.00, to purchase additional amounts of our common stock, which we refer to as an Additional Purchase whereby, pursuant to each Additional Purchase we may sell up to $1.0 million of common stock in each Additional Purchase notice, provided, however, that (i) we may not deliver to Lincoln Park more than two separate Additional Purchase notices and (ii) at least 30 business days must pass between our delivery of the first Additional Purchase notice to Lincoln Park and our delivery of the second Additional Purchase notice. The purchase price for each such Additional Purchase shall be equal to the lower of (i) 97% of the purchase price under a Regular Purchase on the date we give notice for the related Additional Purchase, or (ii) $2.00 per share.

Depending on the prevailing market price of our common stock, we may not be able to sell shares to Lincoln Park for the maximum $20.0 million over the term of the Lincoln Park Purchase Agreement. For example, under the rules of the NASDAQ Capital Market, in no event may we issue more than 19.99% of our shares outstanding (which is approximately 4,315,814 shares based on 21,579,071 shares outstanding prior to the signing of the Lincoln Park Purchase Agreement) under the Lincoln Park Purchase Agreement unless we obtain stockholder approval or an exception pursuant to the rules of the NASDAQ Capital Market is obtained to issue more than 19.99%. This limitation will not apply if, at any time the exchange cap is reached and at all times thereafter, the average price paid for all shares issued and sold under the Lincoln Park Purchase Agreement is equal to or greater than $1.6674, which was the consolidated closing bid price of our common stock on December 22, 2016 including an increment for the commitment shares we issued and may issue to Lincoln Park. We are not required or permitted to issue any shares of common stock under the Purchase Agreement if such issuance would breach our obligations under the rules or regulations of the NASDAQ Capital Market. In addition, Lincoln Park will not be required to purchase any shares of our common stock if such sale would result in Lincoln Park's beneficial ownership exceeding 9.99% of the then outstanding shares of our common stock. Our inability to access a portion or the full amount available under the Lincoln Park Purchase Agreement, in the absence of any other financing sources, could have a material adverse effect on our business.

The sale or issuance of our common stock to Lincoln Park may cause dilution and the sale of the shares of common stock acquired by Lincoln Park, or the perception that such sales may occur, could cause the price of our common stock to fall.

In December 2016, we entered into the Lincoln Park Purchase Agreement, pursuant to which Lincoln Park has committed to purchase up to $20.0 million of our common stock. Concurrently with the execution of the Lincoln Park Purchase Agreement, we issued 127,419 shares of our common stock to Lincoln Park as an initial fee for its commitment to purchase shares of our common stock under the Lincoln Park Purchase Agreement. Further, for each additional purchase by Lincoln Park, we will issue additional commitment shares in commensurate amounts up to a total of 382,258 shares based upon the relative proportion of the aggregate

amount of $20.0 million purchased by Lincoln Park. The purchase shares that may be sold pursuant to the Li ncoln Park Purchase Agreement may be sold by us to Lincoln Park at our discretion from time to time over a 30-month period. The purchase price for the shares that we may sell to Lincoln Park under the Lincoln Park Purchase Agreement will fluctuate based on the price of our common stock. Depending on market liquidity at the time, sales of such shares may cause the trading price of our common stock to fall.

We generally have the right to control the timing and amount of any sales of our shares to Lincoln Park. Additional sales of our common stock, if any, to Lincoln Park will depend upon market conditions and other factors to be determined by us. Lincoln Park may ultimately purchase all, some or none of the shares of our common stock that may be sold pursuant to the Lincoln Park Purchase Agreement and, after it has acquired shares, Lincoln Park may sell all, some or none of those shares. Therefore, sales to Lincoln Park by us could result in substantial dilution to the interests of other holders of our common stock. Additionally, the sale of a substantial number of shares of our common stock to Lincoln Park, or the anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales.

Material weaknesses in our internal control over financial reporting have occurred in the past and could occur in the future.

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting, as well as a statement that our independent registered public accounting firm has issued an attestation report on the effectiveness of our internal control over financial reporting.

We identified a material weakness in our internal control over financial reporting for the year ended December 31, 2013, which may have adversely affected investor confidence in us and, as a result, the value of our common stock. While no such material weakness was identified for the years ended December 31, 2016 or December 31, 2015, we cannot assure you that additional material weaknesses will not be identified in the future.

If we are unable to effectively remediate any material weaknesses in a timely manner, or if we identify one or more additional material weaknesses in the future, investors could lose confidence in the accuracy and completeness of our financial reports, which could have a material adverse effect on the price of our common stock.

We may not be able to correctly estimate or control our future operating expenses, which could lead to cash shortfalls.

Our budgeted expense levels are based in part on our expectations concerning future revenues from sales as well our assessment of the future investments needed to expand our commercial organization and support research and development activities. We may be unable to reduce our expenditures in a timely manner to compensate for any unexpected events or a shortfall in revenue. Accordingly, a shortfall in demand for our products or other unexpected events could have an immediate and material impact on our business and financial condition.

Our operating results have been and will likely continue to be volatile.

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, pharmaceutical 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.

Risks Relating to Our Intellectual Property

Our success depends in part on our ability to protect our intellectual property. It is difficult and costly to protect our proprietary rights and technology, and we may not be able to ensure their protection.

Our success depends in part on our ability to obtain and maintain patent, trademark and trade secret protection of our platform technology and current product candidates, including but not limited to our Cytori Cell Therapy and Cytori Nanomedicine products and product candidates, including Habeo Cell Therapy, ATI-0918 and ATI-1123, as well as successfully defending our intellectual property against third-party challenges. Our ability to stop unauthorized third parties from making using selling, offering to sell or importing our platform technology and/or our product candidates is dependent upon the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- we, or Azaya Therapeutics, as the case may be, might not have been the first to file patent applications for the covered inventions;
- it is possible that our pending patent applications will not result in issued patents;
- it is possible that there are dominating patents to our products of which we are not aware;
- it is possible that there are prior public disclosures that could invalidate our patents, of which we are not aware;
- it is possible that others may circumvent our patents;
- it is possible that there are unpublished applications or patent applications maintained in secrecy that may later issue with claims covering our products or technology similar to ours;
- the claims of our patents or patent applications, if and when issued, may not cover our system or products, or our system or product candidates;
- our owned or in-licensed issued patents may not provide us with any competitive advantages, or may be narrowed in scope, be held invalid or unenforceable as a result of legal administrative challenges by third parties;
- others may be able to make or use compounds that are the same or similar to the ATI-1123 product but that are not covered by the claims of our patents;
- we may not be able to detect infringement against our patents, which may be especially difficult for manufacturing processes or formulation patents, such as the patents/applications related to ATI-1123;
- the API in ATI-0918 is commercially available in generic drug products;
- we may not develop additional proprietary technologies for which we can obtain patent protection; or
- the patents of others may have an adverse effect on our business .

The patent positions of pharmaceutical, biopharmaceutical and medical device companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in patents in these fields has emerged to date in the United States. There have been recent changes regarding how patent laws are interpreted, and both the U.S. Patent and Trademark Office, or PTO, and Congress have recently made significant changes to the patent system. There have been three U.S. Supreme Court decisions that now show a trend of the Supreme Court which is distinctly negative on patents. The trend of these decisions along with resulting changes in patentability requirements being implemented by the U.S. Patent and Trademark Office could make it increasingly difficult for us to obtain and maintain patents on our products. We cannot accurately predict future changes in the interpretation of patent laws or changes to patent laws which might be enacted into law. Those changes may materially affect our patents, our ability to obtain patents and/or the patents and applications of our collaborators and licensors. The patent situation in these fields outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in the patents we own or to which we have a license or third-party patents.

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. 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 United States. 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, South Korea, Brazil, South Africa, among other jurisdictions.

Our intellectual property related to Cytori Nanom edicine was acquired from Azaya. As ATI-0918 is a generic drug, we did not acquire any patents related to ATI-0918. We acquired two issued patents and one patent application related to ATI-1123 from Azaya, and intend to file additional patent application s around our ATI-1123 drug candidate. There is no guaranty that any patent applications we file on ATI-1123 will issue, or if issued, that we will be to use and enforce these patents as an effective component of our intellectual property strategy.

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 trade secrets.

We may rely on trade secrets to protect our technology, especially with respect to the Cytori Nanomedicines products, as well as in areas where we do not believe patent protection is appropriate or obtainable. Trade secrets are difficult to protect, and we have limited control over the protection of trade secrets used by our collaborators and suppliers. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, state laws in the Unites States vary, and their courts as well as courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how. If our confidential or proprietary information is divulged to or acquired by third parties, including our competitors, our competitive position in the marketplace will be harmed and our ability to successfully penetrate our target markets could be severely compromised.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the device, biotechnology and pharmaceutical industries, we employ individuals who were previously employed at other device, biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management, which would adversely affect our financial condition.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights, and we may be unable to protect our rights to our products and technology.

Litigation 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, which would result in substantial costs to us and diversion of effort on our part. 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 USPTO 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, prevented from commercializing potential products in the relevant jurisdiction and/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.

Competitors or third parties may infringe on or upon 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 United States where patent rights may be more difficult to enforce. Further, 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.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations or otherwise have a material adverse effect on our business, results of operations, financial condition and prospects.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business.

Our commercial success will also depend, in part, on our ability to avoid infringing on patents issued by others. T here may be issued patents of third parties of which we are currently unaware, that are infringed or are alleged to be infringed by our product candidate or proprietary technologies. Because some patent applications in the United States may be maintained in secrecy until the patents are issued, patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after filing, and publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our owned and in-licensed issued patents or our pending applications, or that we or, if applicable, a licensor were the first to invent the technology. Our competitors may have filed, and may in the future file, patent applications covering our product candidates or technology similar to ours. Any such patent application may have priority over our patent applications or patents, which could further require us to obtain rights to issued patents covering such technologies.

We may be exposed to, or threatened with, future litigation by third parties having patent or other intellectual property rights alleging that our product candidates and/or proprietary technologies infringe their intellectual property rights. These lawsuits are costly and could adversely affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we or our commercialization partners are infringing the third party's patents and would order us or our partners to stop the activities covered by the patents. In addition, there is a risk that a court will order us or our partners to pay the other party damages for having violated the other party's patents.

If a third-party's patent was found to cover our products, proprietary technologies or their uses, we could be enjoined by a court and required to pay damages and could be unable to commercialize our product candidates or use our proprietary technologies unless we or they obtained a license to the patent. A license may not be available to us on acceptable terms, if at all. In addition, during litigation, the patent holder could obtain a preliminary injunction or other equitable relief which could prohibit us from making, using or selling our products, technologies or methods pending a trial on the merits, which could be years away.

Risks Relating to the Securities Markets and an Investment in Our Stock

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

The market price of our common stock has been, and may continue to 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;
- the outcome of clinical trials involving the use of our products, including our sponsored trials;
- 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 currently serve or which we intend to target with our product candidates;
- 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;
- our continuing ability to list our securities on an established market or exchange;
- 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 markets 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, which may materially harm the market price of our common stock and result in substantial losses for stockholders.

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

As of December 31, 2016, we had 21,707,890 shares of our common stock outstanding. Sales of a number of shares of common stock in the public market, including pursuant to the Lincoln Park Purchase Agreement, or our ATM program, or the expectation of such sales, could cause the market price of our common stock to decline. We may also sell additional common stock or securities convertible into or exercisable or exchangeable for common stock in subsequent public or private offerings or other transactions, which may adversely affect the market price of our common stock.

We have granted demand registration rights for the resale of certain shares of our common stock to each of 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 approximately 300,000 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 of 1933, as amended, or 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.

We have also granted registration rights to Azaya, with respect to the 1,173,241 shares of our common stock that we issued in the name of Azaya at the closing of our acquisition of the Cytori Nanomedicine assets. Under the terms of our asset purchase agreement with Azaya, we are required to use best efforts to have a registration statement covering these shares filed with the SEC, and are thereafter required to use commercially reasonable efforts to have the registration declared effective by the SEC. Though Azaya is subject to certain volume limitations regarding its sales of our common stock, once Azaya is able to sell these shares, any such sales could put pressure on our stock and depress our share price.

Our stockholders may experience substantial dilution in the value of their investment if we issue additional shares of our capital stock.

Our charter allows us to issue up to 75,000,000 shares of our common stock and to issue and designate the rights of, without stockholder approval, up to 5,000,000 shares of preferred stock. To raise additional capital, we may in the future sell additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that are lower than the prices paid by existing stockholders, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders, which could result in substantial dilution to the interests of existing stockholders.

We could be delisted from Nasdaq, which could seriously harm the liquidity of our stock and our ability to raise capital.

Following notice from Nasdaq staff in June 2015 and December 2015, we had a hearing in January 2016 relating to our noncompliance with the $1.00 minimum bid price per share requirement. The NASDAQ Hearing Panel granted us until May 31, 2016 to come into compliance with the minimum bid price requirement, including requirements relating to obtaining stockholders approval

of a reverse stock split that would bring our stock price above $1.00 per share for a minimum of 10 consecutive trading days. We transferr ed the listing of our common stock from the NASDAQ Global Market to the NASDAQ Capital Market in February 2016. In May 2016, we consummated a 1-for-15 reverse stock split pursuant to which the minimum bid price per share of our common stock rose above $1. 00. Pursuant to a letter dated May 26, 2016, the Nasdaq staff delivered notice to us that we had regained compliance with Nasdaq's minimum bid price rule. However, we may be unable to maintain compliance with our current minimum bid price obligation or th e other listing requirements, which could cause us to lose eligibility for continued listing on the NASDAQ Capital Market or any comparable trading market. If we cease to be eligible to trade on the NASDAQ Capital Market:

- We may have to pursue trading on a less recognized or accepted market, such as the OTC Bulletin Board or the "pink sheets."
- The trading price of our common stock could suffer, including an increased spread between the "bid" and "asked" prices quoted by market makers.
- Shares of our common stock could be less liquid and marketable, thereby reducing the ability of stockholders to purchase or sell our shares as quickly and as inexpensively as they have done historically. If our stock is traded as a "penny stock," transactions in our stock would be more difficult and cumbersome.
- We may be unable to access capital on favorable terms or at all, as companies trading on alternative markets may be viewed as less attractive investments with higher associated risks, such that existing or prospective institutional investors may be less interested in, or prohibited from, investing in our common stock. This may also cause the market price of our common stock to decline.

We may be or become the target of securities litigation, which is costly and time-consuming to defend.

In the past, following periods of market volatility in the price of a company's securities, the reporting of unfavorable news or continued decline in a company's stock price, security holders have often instituted class action litigation. The market value of our securities has steadily declined over the past several years for a variety of reasons discussed elsewhere in this "Risk Factors" section, which heightens our litigation risk. If we become involved in this type of litigation, regardless of the outcome, we could incur substantial legal costs and our management's attention could be diverted from the operation of our business, causing our business to suffer. Any adverse determination in any such litigation or any amounts paid to settle any such actual or threatened litigation could require that we make significant payments.

We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our common stock as to distributions and in liquidation, which could negatively affect the value of our common stock.

In the future, we may attempt to increase our capital resources by entering into debt or debt-like financing that is unsecured or secured by up to all of our assets, or by issuing additional debt or equity securities, which could include issuances of secured or unsecured commercial paper, medium-term notes, senior notes, subordinated notes, guarantees, preferred stock, hybrid securities, or securities convertible into or exchangeable for equity securities. In the event of our liquidation, our lenders and holders of our debt and preferred securities would receive distributions of our available assets before distributions to the holders of our common stock. Because our decision to incur debt and issue securities in future offerings may be influenced by market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings or debt financings. Further, market conditions could require us to accept less favorable terms for the issuance of our securities in the future.

If you hold warrants issued pursuant to our rights offering, you may be limited in your ability to engage in certain hedging transactions that could provide you with financial benefits.

In June 2016, we closed our rights offering to subscribe for units at a subscription price of $2.55 per unit, or the Rights Offering. Pursuant to the Rights Offering, we sold to our stockholders of record (as of May 20, 2016) an aggregate of 6,704,852 units consisting of 6,704,852 shares of common stock and 3,352,306 warrants, or Warrants, with each Warrant exercisable for one share of common stock at an exercise price of $3.06 per share.

Holders of Warrants were required to represent to us that they will not enter into any short sale or similar transaction with respect to our common stock for so long as they continue to hold Warrants. These requirements prevent our Warrant holders from pursuing certain investment strategies that could provide them greater financial benefits than they might have realized had they not been required to make this representation.

Absence of a public trading market for the Warrants may limit the ability to resell the Warrants.

The Warrants are listed for trading on Nasdaq under the symbol "CYTXW," but there can be no assurance that a robust market will exist for the Warrants. Even if a market for the Warrants does develop, the price of the Warrants may fluctuate and liquidity may be limited. If the Warrants cease to be eligible for continued listing on Nasdaq, or if the market for the Warrants does not fully develop (or subsequently weakens), then purchasers of the Warrants may be unable to resell the Warrants or sell them only at an unfavorable price for an extended period of time, if at all. Future trading prices of the Warrants will depend on many factors, including:

- our operating performance and financial condition;
- our ability to continue the effectiveness of the registration statement covering the Warrants and the common stock issuable upon exercise of the Warrants;
- the interest of securities dealers in making and maintaining a market; and
- the market for similar securities.

The market price of our common stock may never exceed the exercise price of the Warrants issued in connection with the Rights Offering.

The Warrants issued pursuant to the Rights Offering became exercisable upon issuance and will expire thirty (30) months from the date of issuance. The market price of our common stock may never exceed the exercise price of the Warrants prior to their date of expiration. Any Warrants not exercised by their date of expiration will expire worthless and we will be under no further obligation to the Warrant holder.

The Warrants contain features that may reduce Warrant holders' economic benefit from owning them.

The Warrants contain features that allow us to redeem the Warrants and that prohibit Warrant holders from engaging in certain investment strategies. We may redeem the Warrants for $0.01 per Warrant once the closing price of our common stock has equaled or exceeded $7.65 per share, subject to adjustment, for ten consecutive trading days, provided that we may not do so prior to the first anniversary of closing of the Rights Offering, and only upon not less than thirty (30) days' prior written notice of redemption. If we give notice of redemption, Warrant holders will be forced to sell or exercise their Warrants or accept the redemption price. The notice of redemption could come at a time when it is not advisable or possible for Warrant holders to exercise the Warrants. As a result, Warrant holders may be unable to benefit from owning the Warrants being redeemed. In addition, for so long as Warrant holders continue to hold Warrants, they will not be permitted to enter into any short sale or similar transaction with respect to our common stock. This could prevent Warrant holders from pursuing investment strategies that could provide them greater financial benefits from owning the Warrants.

Since the Warrants are executory contracts, they may have no value in a bankruptcy or reorganization proceeding.

In the event a bankruptcy or reorganization proceeding is commenced by or against us, a bankruptcy court may hold that any unexercised Warrants are executory contracts that are subject to rejection by us with the approval of the bankruptcy court. As a result, holders of the Warrants may, even if we have sufficient funds, not be entitled to receive any consideration for their Warrants or may receive an amount less than they would be entitled to if they had exercised their Warrants prior to the commencement of any such bankruptcy or reorganization proceeding.

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 presently do not intend to pay cash dividends on our common stock.

W e have never paid cash dividends in the past, and w e currently anticipate that no cash dividends will be paid on the common stock in the foreseeable future. Furthermore, our Loan and Security Agreement with Oxford currently prohibits our issuance of cash dividends. This could make an investment in our common stock inappropriate for some investors, and may serve to narrow our potential sources of additional capital. While our dividend policy will be based on the operating results and capital needs of the business, it is anticipated that all earnings, if any, will be retained to finance the future expansion of our business.

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 may 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 1B. Unresolved Staff Comments

Not applicable.

Item 2. Properties

We lease 77,585 square feet at 3020 and 3030 Callan Road, San Diego, California that we use for our corporate headquarters and manufacturing facilities. The related lease agreement, as amended, provides for a monthly rent that commenced at a rate of $1.80 per square foot, with an annual increase of $0.05 per square foot. The lease term is 88 months, commenced on July 1, 2010 and expiring on October 31, 2017.

Additionally, we entered into several lease agreements for international office locations. For these properties, we pay an aggregate of approximately $28,000 in rent per month. The lease for the property in Japan will expire in May 2017 and the lease for the property in the United Kingdom will expire in June 2019.

Item 3. Legal Proceedings

From time to time, we have been involved in routine litigation incidental to the conduct of our business. As of December 31, 2016, we were not a party to any material legal proceeding.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Com mon Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Prices

From August 2000 (our initial public offering in Germany) until September 2007, our common stock was quoted on the Frankfurt Stock Exchange under the symbol "XMPA" (formerly XMP). In September 2007, our stock closed trading on the Frankfurt Stock Exchange. In December 2005, our common stock commenced trading on the NASDAQ Capital Market under the symbol "CYTX." From December 2005 until February 2006, our common stock traded on the NASDAQ Capital Market, from February 2006 until February 2016, it traded on the NASDAQ Global Market, and since February 2016, it has traded on the NASDAQ Capital Market. Our common stock has, from time to time, traded on a limited, sporadic and volatile basis. The following tables show the high and low sales prices for our common stock for the periods indicated, as reported on the NASDAQ Global Market or the NASDAQ Capital Market, as applicable. These prices do not include retail markups, markdowns or commissions.

Common Stock

	High	Low
2015		
Quarter ended March 31, 2015	$ 20.55	$ 6.60
Quarter ended June 30, 2015	$ 20.25	$ 8.40
Quarter ended September 30, 2015	$ 8.25	$ 4.50
Quarter ended December 31, 2015	$ 6.30	$ 2.85
2016		
Quarter ended March 31, 2016	$ 3.30	$ 1.95
Quarter ended June 30, 2016	$ 5.25	$ 2.00
Quarter ended September 30, 2016	$ 2.25	$ 1.83
Quarter ended December 31, 2016	$ 2.00	$ 1.36

All of our outstanding shares have been deposited with the Depository Trust & Clearing Corporation (DTCC) since December 9, 2005.

As of January 31, 2016, we had approximately 21 record holders of our common stock. Because many of our shares are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of individual stockholders represented by these record holders.

Dividends

We have never declared or paid any dividends on our common stock and do not anticipate paying any in the foreseeable future. Furthermore, our Loan and Security Agreement currently prohibits our issuance of cash dividends on common stock.

Equity Compensation Plan Information

The following table gives information as of December 31, 2016 about shares of our common stock that may be issued upon the exercise of outstanding options, warrants and rights and shares remaining available for issuance under all of our equity compensation plans:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)		Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)) (c)
Equity compensation plans approved by security holders (1)	7,782	$	84.23	—
Equity compensation plans not approved by security holders (2)	230,748	$	56.75	—
Equity compensation plans not approved by security holders (3)	364,764	$	4.64	525,965
Equity compensation plans not approved by security holders (4)	33,333	$	2.18	33,333
Total	636,627	$	24.37	559,298

(1) The 1997 Stock Option and Stock Purchase Plan expired in October 2007.

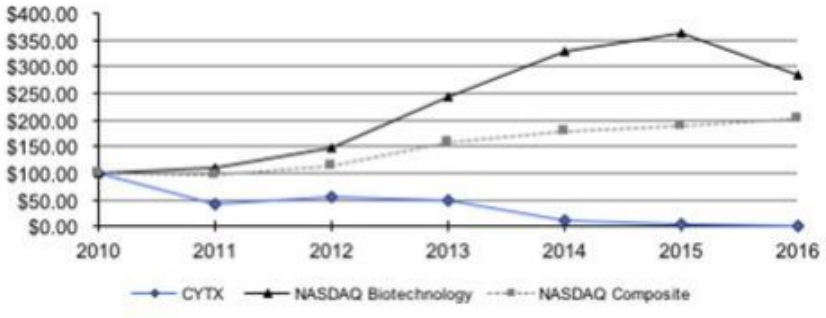
(2) The 2004 Stock Option and Stock Purchase Plan expired in August 2014.

(3) See Notes to the Consolidated Financial Statements included elsewhere herein for a description of our 2014 Equity Incentive Plan.

(4) See Notes to the Consolidated Financial Statements included elsewhere herein for a description of our 2015 New Employee Incentive Plan.

Comparative Stock Performance Graph

The following graph shows how an initial investment of $100 in our common stock would have compared to an equal investment in the NASDAQ Composite Index and the NASDAQ Biotechnology Index during the period from December 31, 2010 through December 31, 2016. The performance shown is not necessarily indicative of future price performance.



Item 6. Selected Financial Data

The selected data presented below under the captions "Statements of Operations Data," "Statements of Cash Flows Data" and "Balance Sheet Data" for, and as of the end of, each of the years in the two-year period ended December 31, 2016, are derived from, and should be read in conjunction with, our audited consolidated financial statements. The consolidated balance sheets as of December 31, 2016 and 2015, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2016, which have been audited by BDO USA, LLP as of December 31, 2016 and KPMG LLP as of December 31, 2015, which are independent registered public accounting firms, and their reports thereon, are included elsewhere in this Annual Report.

The information contained in this table should also be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes thereto included elsewhere in this report:

Consolidated Statements of Operations and Comprehensive Loss (in thousands)

	For the Years Ended December 31,	
	2016	2015
Product revenues	$ 4,656	$ 4,838
Cost of product revenues	2,715	3,186
Gross profit	1,941	1,652
Development revenues:		
Government contracts and other	6,724	6,821
	6,724	6,821
Operating expenses:		
Research and development	16,197	19,000
Sales and marketing	3,611	2,662
General and administrative	8,563	9,765
Change in fair value of warrant liabilities	—	(7,668)
Total operating expenses	28,371	23,759
Operating loss	(19,706)	(15,286)
Other income (expense):		
Loss on debt extinguishment	—	(260)
Interest income	19	9
Interest expense	(2,592)	(3,379)
Other income, net	233	172
Total other expense	(2,340)	(3,458)
Net loss	$ (22,046)	$ (18,744)
Beneficial conversion feature for convertible preferred stock	—	(661)
Net loss allocable to common stockholders	$ (22,046)	$ (19,405)
Basic and diluted net loss per share allocable to common stockholders	$ (1.28)	$ (2.07)
Basic and diluted weighted average shares used in calculating net loss per share allocable to common stockholders	17,290,933	9,386,488
Comprehensive loss:		
Net loss	$ (22,046)	$ (18,744)
Other comprehensive income – foreign currency translation adjustments	262	296
Comprehensive loss	$ (21,784)	$ (18,448)

Consolidated Statements of Cash Flows (in thousands)

	For the Years Ended December 31,	
	2016	2015
Net cash used in operating activities	$ (19,533)	$ (20,468)
Net cash provided by (used in) used in investing activities	64	(613)
Net cash provided by financing activities	17,609	20,797
Effect of exchange rate changes on cash and cash equivalents	82	—
Net decrease in cash and cash equivalents	(1,778)	(284)
Cash and cash equivalents at beginning of year	14,338	14,622
Cash and cash equivalents at end of year	$ 12,560	$ 14,338

Consolidated Balance Sheet Details (in thousands)

	As of December 31,	
	2016	2015
Cash and cash equivalents	$ 12,560	$ 14,338
Working capital	6,246	12,806
Total assets	34,609	37,698
Deferred revenues	97	105
Long-term deferred rent and other	17	269
Long-term obligations, net of discount, less current portion	11,008	16,681
Total stockholders' equity	10,986	12,206

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

We develop cellular therapeutics uniquely formulated and optimized for specific diseases and medical conditions and related products. Lead therapeutics in our pipeline are currently targeted for impaired hand function in scleroderma, osteoarthritis of the knee, stress urinary incontinence, and deep thermal burns including those complicated by radiation exposure.

Our cellular therapeutics are collectively known by the trademarked name, Cytori Cell Therapy, and consist of a mixed population of specialized cells including stem cells that are involved in response to injury, repair and healing. These cellular therapeutics are extracted from an adult patient's own adipose (fat) tissue using our fully automated Celution System, which includes a device, proprietary enzymes, and sterile consumable sets utilized at the point-of-therapeutic application or potentially at an off-site processing center. Cytori Cell Therapy can either be administered to the patient the same day or cryopreserved for future use.

Our primary near-term goal is for Cytori Cell Therapy to be the first cell therapy to market for the treatment of impaired hand function in scleroderma, through Cytori-sponsored and supported clinical development efforts. The STAR trial is a 48-week, randomized, double blind, placebo-controlled Phase III pivotal clinical trial of 80 patients in the U.S. The trial evaluates the safety and efficacy of a single administration of Cytori Cell Therapy (ECCS-50) in scleroderma patients affecting the hands and fingers. The first sites for the scleroderma study were initiated in July 2015 and completed enrollment of 88 patients in June 2016. We anticipate that we will receive 48-week follow-up data on this Phase III pivotal clinical trial in mid-2017.

With respect to the remainder of our clinical pipeline, we received Investigational Device Exemption, or IDE, approval from the U.S. Food and Drug Administration, or the FDA, in late 2014 for our Phase II ACT-OA osteoarthritis study and in early 2015 we initiated this study, and enrollment was completed in June 2015. The 48-week analysis was performed as planned and the top-line data are described in the "Osteoarthritis" section below. In July 2015, a Company-supported male stress urinary incontinence, or SUI, trial in Japan for male prostatectomy patients (after prostate surgery) received approval to begin enrollment from the Japanese Ministry of Health, Labor and Welfare, or MHLW. Patient enrollment is ongoing. Partial funding of this study is granted by AMED (Japan Agency for Medical Research and Development). The goal of this investigator-initiated trial is to gain regulatory approval in Japan of Cytori Cell Therapy for this indication. We are also developing a treatment for thermal burns combined with radiation injury under a contract from the Biomedical Advanced Research Development Authority, or BARDA, a division of the U.S. Department of Health and Human Services. We are also exploring other development opportunities in a variety of other conditions.

In addition to o ur targeted therapeutic development, we have continued to commercialize our Cytori Cell Therapy technology under select medical device approvals, clearances and registrations to research and commercial customers in Europe, Japan and other regions. Many of these customers are research customers evaluating new therapeutic applications of Cytori Cell Therapy. The sale of systems, consumables and ancillary products contributes a margin that partially offsets our operating expenses and will continue to play a ro le in fostering familiarity within the medical community with our technology. These sales have also facilitated the discovery of new applications for Cytori Cell Therapy by customers conducting investigator-initiated and funded research.

Lead Indication: Scleroderma

Scleroderma is a rare and chronic autoimmune disorder associated with fibrosis of the skin, and destructive changes in blood vessels and multiple organ systems as the result of a generalized overproduction of collagen. Scleroderma affects approximately 50,000 patients in the U.S. (women are affected four times more frequently than men) and is typically detected between the ages of 30 and 50. More than 90 percent of scleroderma patients have hand involvement that is typically progressive and can result in chronic pain, blood flow changes and severe dysfunction. The limited availability of treatments for scleroderma may provide some benefit but do little to modify disease progression or substantially improve symptoms. Treatment options are directed at protecting the hands from injury and detrimental environmental conditions as well as the use of vasodilators. When the disease is advanced, immunosuppressive and other medications may be used but are often accompanied by significant side effects.

In January 2015, the FDA granted IDE approval for a pivotal clinical trial, named the “STAR” trial, to evaluate Cytori Cell Therapy as a potential treatment for impaired hand function in scleroderma. The STAR trial is a 48-week, randomized, double blind, placebo-controlled pivotal clinical trial of 88 patients in the U.S. The trial evaluates the safety and efficacy of a single administration of Habeo Cell Therapy in patients with scleroderma affecting the hands and fingers. The STAR trial uses the Cochin Hand Function Scale, or CHFS, a validated measure of hand function, as the primary endpoint measured at six months after a single administration of Habeo Cell Therapy or placebo. Patients in the placebo group will be eligible for crossover to the active arm of the trial after all patients have completed 48 weeks of follow up. In February 2015, the FDA approved our request to increase the number of investigational sites from 12 to up to 20. The increased number of sites served to broaden the geographic coverage of the trial and facilitate trial enrollment. The enrollment of this trial began in August 2015 and was completed at 88 patients in June 2016. We anticipate that we will receive 48-week follow-up data on this Phase III pivotal clinical trial in mid-2017.

The STAR trial is predicated on a completed investigator-initiated pilot 12-patient, open-label Phase I trial performed in France termed SCLERADEC I. The SCLERADEC I trial received partial support from Cytori. The six-month results were published in the Annals of the Rheumatic Diseases in May 2014 and demonstrated approximately a 50 percent improvement at six months across four important and validated endpoints used to assess the clinical status in patients with scleroderma with impaired hand function. Patients perceived their health status to be improved as shown by a 45.2% and 42.4% decrease of the Scleroderma Health Assessment Questionnaire, or SHAQ, at month 2 ($p=0.001$) and at month 6 ($p=0.001$), respectively. A 47% and 56% decrease of the CHFS at month 2 and month 6 in comparison to baseline was observed ($p<0.001$ for both). Grip strength increased at month 6 with a mean improvement of $+4.8\pm6.4$ kg for the dominant hand ($p=0.033$) and $+4.0\pm3.5$ kg for the non-dominant hand ($p=0.002$). Similarly, an increase in pinch strength at month 6 was noted with a mean improvement of $+1.0\pm1.1$ kg for the dominant hand ($p=0.009$) and $+0.8\pm1.2$ kg for the non-dominant hand ($p=0.050$). Among subjects having at least one digital ulcer, or DU, at inclusion, total number of DU decreased, from 15 DUs at baseline, 10 at month 2 and 7 at month 6. The average reduction of the Raynaud’s Condition Score from baseline was 53.7% at month 2 ($p<0.001$) and 67.5% at month 6 ($p<0.001$). Hand pain showed a significant decrease of 63.6% at month 2 ($p=0.001$) and 70% at month 6 ($p<0.001$). One year results were published in September 2015 in the journal Rheumatology. Relative to baseline, the CHFS and the SHAQ improved by 51.3% and 46.8%, respectively ($p<0.001$ for both). The Raynaud’s score improved by 63.2% from baseline ($p<0.001$). Other findings at one-year included a 30.5% improvement in grip strength ($p=0.002$) and a 34.5% improvement in hand pain ($p=0.052$). In February 2016, two-year follow up data in the SCLERADEC I trial was presented at the Systemic Sclerosis World Congress, which demonstrated sustained improvement in the following four key endpoints: Cochin Hand Function Score (CHFS), Scleroderma Health Assessment Questionnaire, Raynaud’s Condition Score (which assesses severity of Raynaud’s Phenomenon), and hand pain, as assessed by a standard visual analogue scale. The major findings at 24 months following a single administration of ECCS-50 were as follows:

- Hand dysfunction assessed by the CHFS, showed a 62% reduction in hand dysfunction at two years ($p<0.001$).
- Raynaud’s Condition Score decreased by an average of 89% over baseline at two years ($p<0.001$).
- Hand pain, as measured by a 100 mm Visual Analogue Scale, and the Scleroderma Health Assessment Questionnaire (SHAQ) score at two years both showed improvement of 50% over baseline ($p=0.01$ and $p<0.001$, respectively).
- Improvement of 20% in grip strength and 330% in pinch strength at two years ($p=0.05$ and $p=0.004$, respectively).
- Continued reduction in the number of ulcers from 15 at baseline to 9 at one year and 6 at two years.

In 2014, Drs. Guy Magalon and Brigitte Granel, under the sponsorship of the Assistance Publique - Hôpitaux de Marseille, submitted a study for review for a follow-up Phase III randomized, double-blind, placebo-controlled trial in F rance using Cytori Cell Therapy, to be supported by Cytori. The trial name is SCLERADEC II and was approved by the French government in April 2015. Enrollment of this trial commenced in October 2015 and is ongoing. Patients will be followed for a 6-month p ost-procedure.

In April 2016, the European Commission, acting on the positive recommendation from the European Medicines Agency Committee for Orphan Medicinal Products, issued orphan drug designation to a broad range of Cytori Cell Therapy formulations when used for the treatment of hand dysfunction and Raynaud's Phenomenon in patients with scleroderma under Community Register of Orphan Medicinal Products number EU/3/16/1643. In November 2016, the US FDA Office of Orphan Products Development (OOPD) granted Cytori an orphan drug designation for cryopreserved or centrally processed ECCS-50 (HABEO) for scleroderma.

Osteoarthritis

Osteoarthritis is a disease of the entire joint involving the cartilage, joint lining, ligaments and underlying bone. The breakdown of tissue leads to pain, joint stiffness and reduced function. It is the most common form of arthritis and affects an estimated 13.9% of US adults over the age of 25, and 33.6% of U.S. adults over the age of 65. Current treatments include physical therapy, non-steroidal anti-inflammatory medications, viscosupplement injections, and total knee replacement. A substantial medical need exists as present medications have limited efficacy and joint replacement is a relatively definitive treatment for those with the most advanced disease.

In the later part of 2014, we received approval by the FDA to begin an exploratory U.S. IDE pilot (Phase II) trial of Cytori Cell Therapy (ECCO-50) in patients with osteoarthritis of the knee. The trial, called ACT-OA, is a 94-patient, randomized, double-blind, placebo controlled study involving two doses of Cytori Cell Therapy, a low dose and a high dose, and was conducted over 48 weeks. The randomization is 1:1:1 between the control, low and high dose groups. Enrollment on this trial began in February 2015 and was completed in June 2015. The goal of this proof-of-concept trial is to help determine: (1) safety and feasibility of the ECCO-50 therapeutic for osteoarthritis, (2) provide dosing guidance and (3) explore key trial endpoints useful for a Phase III trial.

Top-line analysis of the final 48-week data has recently been completed. The primary objective of this prospective, randomized, placebo controlled study was to evaluate the safety and feasibility of intraarticular injection of Celution prepared adipose-derived regenerative cells injected into knees of patients with chronic knee pain due to osteoarthritis. A total of 94 patients were randomized (33 placebo, 30 low dose ECCS-50, 31 high dose ECCS-50). In general, a clear difference between low and high dose ECCS-50 was not observed and therefore the data for both groups have been combined. Numerous endpoints were evaluated that can be summarized as follows:

- Intraarticular application of a single dose of ECCO-50 is feasible in an outpatient day-surgery setting; no serious adverse events were reported related to the fat harvest, cell injection or to the cell therapy.
- Consistent trends observed in most secondary endpoints at 12, 24 and 48 weeks in the target knee of the treated group relative to placebo control group; 12-week primary endpoint of single pain on walking question did not achieve statistical significance.
- Consistent trends observed in all 6 pre-specified MRI Osteoarthritis Knee Score (MOAKS) classification scores suggesting decrease in target knee joint pathologic features at 48 weeks for the treated group relative to placebo control group. The differences against placebo favored ADRCs specifically in the number of bone marrow lesions, the percentage of the bone marrow lesion that is not a cyst, the size of the bone marrow lesions as a percentage of the total sub-region volume, percentage of full thickness cartilage loss, cartilage loss as a percentage of cartilage surface area and the size of the largest osteophyte.

In summary, the ACT-OA Phase II trial demonstrated feasibility of same day fat harvesting, cell processing and intraarticular administration of autologous ADRCs (ECCO-50) with a potential for a cell benefit effect. Additional analyses are ongoing. The accumulated data and experienced gained will be critical in considering designs of further clinical trials in osteoarthritis and other potential indications. As well, the multicenter nature of the trial in the United States provides relevant information as to optimizing commercialization.

Stress Urinary Incontinence

Another therapeutic target under evaluation by Cytori in combination with the University of Nagoya and the Japanese MHLW is stress urinary incontinence in men following surgical removal of the prostate gland, which is based on positive data reported in a peer reviewed journal resulting from the use of ADRCs prepared by our Celution System. The ADRESU trial is a 45 patient, investigator-initiated, open-label, multi-center, single arm trial that was approved by the Japanese MHLW in July 2015 and is being led by both Momokazu Gotoh, MD, Ph.D., Professor and Chairman of the Department of Urology and Tokunori Yamamoto, MD, Ph.D.,

Associate Professor De partment of Urology at University of Nagoya Graduate School of Medicine. Trial enrollment began trial in September 2015, and in December 2016, the trial was 50% enrolled. This clinical trial is primarily sponsored and funded by the Japanese government, in cluding a grant provided by AMED.

Cutaneous and Soft Tissue Thermal and Radiation Injuries

Cytori Cell Therapy is also being developed for the treatment of thermal burns combined with radiation injury. In the third quarter of 2012, we were awarded a contract valued at up to $106 million with BARDA to develop a medical countermeasure for thermal burns. The initial base period included $4.7 million over two years and covered preclinical research and continued development of Cytori's Celution System to improve cell processing.

In 2014, an in-process review meeting was held with BARDA at which Cytori confirmed completion of the objectives of the initial phase of the contract. In August 2014, BARDA exercised contract option 1 in the amount of approximately $12 million. In December 2014 and September 2016, the option 1 was supplemented with an additional $2 million and $2.5 million in funds, respectively. This funded continuation of research, regulatory, clinical and other activities required for submission of an Investigational Device Exemption, or IDE, request to the FDA for a pilot clinical trial using Cytori Cell Therapy (DCCT-10) for the treatment of thermal burns. We anticipate that we will receive IDE approval in the first half of 2017 to execute this pilot clinical trial. Upon receipt of IDE approval, if granted, we anticipate that BARDA will provide funding to cover costs associated with execution of the clinical trial and related activities, currently estimated to be between $8.0 million and $12.0 million.

Our contract with BARDA contains two additional options to fund a pivotal clinical trial and additional preclinical work in thermal burn complicated by radiation exposure. These options are valued at up to $45 million and $23 million, respectively.

The total award under the BARDA contract is intended to support all clinical, preclinical, regulatory and technology development activities needed to complete the FDA approval process for use of DCCT-10 in thermal burn injury under a device-based PMA regulatory pathway and to provide preclinical data in burn complicated by radiation exposure.

Other Clinical Indications

Heart failure due to ischemic heart disease does not represent a current clinical target for us at this time. Our ATHENA and ATHENA II trials related to that indication were truncated and we have minimized expenses related to initiatives in this area. While the safety data from these trial programs will be used for regulatory support for our other indications and also for publication in peer reviewed forums, we are not actively pursuing indications related to these trials. The 12 month results of the ATHENA Trials were presented by the investigators at the Society of Cardiac Angiography and Interventions Annual Scientific Meeting on May 5, 2016 and data was published in the Catheterization and Cardiovascular Interventions journal in June 2016.

Results of Operations

Product revenues

Product revenues consisted of revenues primarily from the sale of our Cytori Cell Therapy-related products.

The following table summarizes the components for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
Product revenues - third party	$ 4,656	$ 4,838

A majority of our product revenue in 2016 and 2015 was derived from Japan. Two new regenerative medicine laws in Japan went into effect in November 2014, removing regulatory uncertainties and providing a clear path for us to offer Cytori Cell Therapy in Japan, where our technology is mainly being used in the aesthetics and orthopedic fields. Further, we expect continued demand from researchers at academic hospitals seeking to perform investigator-initiated and funded studies.

We experienced a decrease of $0.2 million in product revenue during the year ended December 31, 2016 as compared to the same period in 2015, due to decreased revenues in Asia Pacific of $0.7 million, primarily due to the opening order from Lorem Vascular in the second quarter of 2015 and lack of ongoing orders in subsequent periods and decreased revenue in EMEA of $0.3 million, but partially offset by increased revenues in Japan of $0.9 million due to continued adoption of Cytori Cell Therapy primarily in the aesthetic and osteoarthritis business.

The future: We expect to continue to generate a majority of product revenues from the sale of Cytori Cell Therapy-related products to researchers, clinicians, and distributors in EMEA, Japan, Asia Pacific, and the Americas. In Japan and EMEA, researchers will use our technology in ongoing and new investigator-initiated and funded studies focused on, but not limited to, hand scleroderma, Crohn's disease, peripheral artery disease, erectile dysfunction, and diabetic foot ulcers. Habeo Cell Therapy for hand scleroderma will continue to be accessible to patients and physicians through a managed access progra m, or MAP, that we initiated in EMEA in 2016. In the Americas, Cytori's partner, Kerastem, is utilizing the Cytori Cell Therapy technology as part of its FDA-approved STYLE trial for patients with alopecia, or hair loss. Overall, we expect 2017 product re venues to remain relatively consistent with 2016.

Cost of product revenues

Cost of product revenues relate primarily to Cytori Cell Therapy-related products and includes material, manufacturing labor, and overhead costs, as well as amortization of intangible assets. The following table summarizes the components of our cost of revenues for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
Cost of product revenues	$ 2,128	$ 2,745
Amortization of intangible assets	546	362
Share-based compensation	41	79
Total cost of product revenues	$ 2,715	$3,186
Total cost of product revenues as % of product revenues	58%	66%

Cost of product revenues as a percentage of product revenues was 58% and 66% for the years ended December 31, 2016 and 2015, respectively. Fluctuation in this percentage is due to the product mix, distributor and direct sales mix, geographic mix, foreign exchange rates and allocation of overhead.

The future: We expect to continue to see variation in our gross profit margin as the product mix, distributor and direct sales mix and geographic mix comprising revenues fluctuate. We are investigating various pricing options for our cellular therapeutics, including orphan pricing for our Habeo Cell Therapy, which may help to increase our gross profit margins in 2017 and beyond.

Development revenues

Under our government contract with BARDA, we recognized a total of $6.7 million and $6.8 million in development revenues for the years ended December 31, 2016 and 2015, respectively which included allowable fees as well as cost reimbursements. During both of the years ended December 31, 2016 and 2015, we incurred $6.3 million in qualified expenditures. The decrease in revenues for the years ended December 31, 2016 as compared to the same periods in 2015 is primarily due to slight decreases in research and development activities related to our contact with BARDA.

The future: Our current contract with BARDA expires in April 2017. We are in the process of negotiating an extension of the current contract option (which will expire in mid-April) for initiation of a pilot clinical trial of DCCT-10 in thermal burn injury.

Research and development expenses

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 as well as the continued development efforts related to our clinical trials.

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

The following table summarizes the components of our research and development expenses for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
General research and development	$ 15,846	$ 18,442
Share-based compensation	351	558
Total research and development expenses	$ 16,197	$ 19,000

The decrease in research and development expenses, excluding share-based compensation for the year ended December 31, 2016 as compared to the same period in 2015 is due to a decrease of approximately $2.6 million in clinical studies and related professional services as well as a decrease in salaries and benefits as a result of a decrease in the number of the U.S. clinical trials enrolling from two trials in 2015 to one trial in 2016.

The future: We expect aggregate research and development expenditures to increase in 2017 as we incur development costs in preparation of Habeo U.S. PMA filing submission, our development efforts of the recently acquired assets from Azaya Therapeutics, and ongoing activities of the U.S. STAR clinical trial.

Sales and marketing expenses

Sales and marketing expenses include costs of sales and marketing personnel, events and tradeshows, customer and sales representative education and training, primary and secondary market research, and product and service promotion. The following table summarizes the components of our sales and marketing expenses for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
Sales and marketing	$ 3,444	$ 2,552
Share-based compensation	167	110
Total sales and marketing expenses	$ 3,611	$ 2,662

Sales and marketing expenses excluding share-based compensation increased by approximately $0.9 million for the year ended December 31, 2016 as compared to the same period in 2015 due to increases in salary and related benefits expense and professional services mostly related to our operations in Japan, commercial planning activities for scleroderma in the U.S. and investments in the EMEA managed access program.

The future: We expect sales and marketing expenditures to slightly increase during the first half of 2017. These expenditures will have a greater increase in the second half of 2017 as we prepare for commercial readiness for hand scleroderma in the U.S. and knee osteoarthritis, aesthetics and stress urinary incontinence in Japan.

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 years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
General and administrative	$ 8,042	$ 8,471
Share-based compensation	521	1,294
Total general and administrative expenses	$ 8,563	$9,765

General and administrative expenses excluding share-based compensation decreased by $0.4 million for the year ended December 31, 2016, as compared to the same period in 2015 primarily due to decreases in salary and related benefits expense and professional services consistent with our ongoing cost curtailment efforts.

The future: We expect general and administrative expenditures to increase significantly with the acquisition of Azaya assets and as we integrate its operations under the Cytori Therapeutics umbrella.

Share-based compensation expenses

Share-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, or 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 requisite service period.

The following table summarizes the components of our share-based compensation for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
Cost of product revenues	$ 41	$ 79
Research and development-related	351	558
Sales and marketing-related	167	110
General and administrative-related	521	1,294
Total share-based compensation	$ 1,080	$ 2,041

The decrease in share-based compensation expenses for the year ended December 31, 2016 as compared to the same period in 2015 is primarily related to a lower annual grant activities caused by reductions in headcount and due to the decline in the stock price during 2016 as compared to the same period in 2015, and its corresponding impact on 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 December 31, 2016, the total compensation cost related to non-vested stock options and stock awards not yet recognized for all our plans is approximately $1.0 million which is expected to be recognized as a result of vesting under service conditions over a weighted average period of 1.6 years.

Change in fair value of warrant liability

The following is a table summarizing the change in fair value of warrant liability for the years ended December 31, 2016 and 2015:

	Years ended December 31,	
	2016	2015
Change in fair value of warrant liability	$ —	$ (7,668)

The decrease in fair value of our warrant liability for the year ended December 31, 2016 as compared to the same period in 2015 is due to the fact that all warrants with price reset features accounted for as liabilities were cashless exercised during the year ended December 31, 2015.

The future: We do not expect any further changes in fair value of warrant liability, as all of our outstanding warrants with exercise price reset features were settled during December 2015.

Financing items

The following table summarizes loss on debt extinguishment, interest income, interest expense, and other income and expense for the years ended December 31, 2016 and 2015 (in thousands):

	Years ended December 31,	
	2016	2015
Loss on debt extinguishment	$ —	$ (260)
Interest income	19	9
Interest expense	(2,592)	(3,379)
Other income, net	233	172
Total	$ (2,340)	$ (3,458)

- In connection with the Loan and Security Agreement, a loss on debt extinguishment was recorded that relates to the payoff of the prior loan obligations.
- Interest expense decreased for the year ended December 31, 2016 as compared to the same period in 2015, due to partial pay down and refinance of principal loan balance in May 2015.
- The changes in other income during the year ended December 31, 2016 as compared to the same periods in 2015 resulted primarily from changes in exchange rates related to transactions in foreign currency.

The future: We expect interest expense in 2017 to decrease as we begin making payments on the principal balance of the Loan and Security Agreement.

Liquidity and Capital Resources

Short-term and long-term liquidity

The following is a summary of our key liquidity measures at December 31, 2016 and 2015 (in thousands):

	As of December 31,	
	2016	2015
Cash and cash equivalents	$ 12,560	$ 14,338
Current assets	$ 18,747	$ 21,243
Current liabilities	12,501	8,437
Working capital	$ 6,246	$ 12,806

We incurred net losses of $22.0 million and $18.7 million for the years ended December 31, 2016 and 2015, respectively. We have an accumulated deficit of $379.1 million as of December 31, 2016. Additionally, we have used net cash of $19.5 million and $20.5 million to fund our operating activities for the years ended December 31, 2016 and 2015, respectively.

To date, these operating losses have been funded primarily from outside sources of invested capital including our recently completed Lincoln Park Purchase Agreement, the Rights Offering (as defined below), our at-the-market or ATM offering program, the Loan and Security Agreement and gross profits. We have had, and we will likely continue to have, an ongoing need to raise additional cash from outside sources to fund our future clinical development programs and other operations.

On June 15, 2016, we closed the Rights Offering originally filed under a Form S-1 registration statement in April 2016. Pursuant to the Rights Offering, we sold an aggregate of 6,704,852 units consisting of a total of 6,704,852 shares of common stock and 3,352,306 warrants, with each warrant exercisable for one share of common stock at an exercise price of $3.06 per share, resulting in total net proceeds of $15.3 million.

During 2016, we sold 1,840,982 shares of our common stock under our ATM offering program, receiving total net proceeds of approximately $4.4 million. Although sa les of our common stock have taken place pursuant to our ATM offering program, there can be no assurance that we will be successful in consummating future sales based on prevailing market conditions or in the quantities or at the prices that we deem approp riate. In addition, under current SEC regulations, at any time during which the aggregate market value of our common stock held by non-affiliates, or public float, is less than $75.0 million, the amount we can raise through primary public offerings of sec urities in any twelve-month period using shelf registration statements, including sales under our ATM offering program, is limited to an aggregate of one-third of our public float. As of December 31, 2016, our public float was 21.5 million shares, the valu e of which was $32.5 million based upon the closing price of our common stock of $1.51 on such date. The value of one-third of our public float calculated on the same basis was approximately $11.0 million.

On December 22, 2016, we entered into the Lincoln Park Purchase Agreement and a registration rights agreement, with Lincoln Park pursuant to which we have the right to sell to Lincoln Park and Lincoln Park is obligated to purchase up to $20.0 million in amounts of shares, of our common stock, over the 30-month period commencing on the date that a registration statement, that we filed with the Securities and Exchange Commission (the "SEC") in December 2016. We may direct Lincoln Park, at its sole discretion and subject to certain conditions, to purchase up to 100,000 shares of common stock on any business day but in no event will the amount of a single Regular Purchase exceed $1.0 million. The purchase price of shares of common stock related to the Regular Purchases will be based on the prevailing market prices of such shares at the time of sales. Our sales of shares of common stock to Lincoln Park under the Lincoln Park Purchase Agreement are limited to no more than the number of shares that would result in the beneficial ownership by Lincoln Park and its affiliates, at any single point in time, of more than 9.99% of the then outstanding shares of the common stock. There are no trading volume requirements or restrictions under the Lincoln Park Purchase Agreement. There is no upper limit on the price per share that Lincoln Park must pay for common stock under a Regular Purchase or an accelerated purchase and in no event will shares be sold to Lincoln Park on a day our closing price is less than the floor price of $0.50 per share as set forth in the Lincoln Park Purchase Agreement. On December 22, 2016, we issued to Lincoln Park 127,419 shares of common stock as commitment shares in consideration for entering into the Lincoln Park Purchase Agreement. We will issue up to an additional 382,258 shares of common stock on a pro rata basis to Lincoln Park only as and when shares are sold under the Lincoln Park Purchase Agreement to Lincoln Park. To date, we sold no shares under the Lincoln Park Purchase Agreement to Lincoln Park.

Pursuant to these securities transactions and related equity issuances, as well as anticipated gross profits and potential outside sources of capital, we believe we have sufficient cash to fund operations through at least through Q2 2017. We continue to seek additional capital through product revenues, strategic transactions, including extension opportunities under the awarded BARDA contract, and from other financing alternatives. However, there can be no assurance that we will be successful in securing additional resources when needed, on terms acceptable to us or at all. Therefore, there exists substantial doubt about our ability to continue as a going concern.

The accompanying consolidated financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to our ability to continue as a going concern.

The following summarizes our contractual obligations and other commitments at December 31, 2016, and the effect such obligations could have on our liquidity and cash flow in future periods (in thousands):

	Payments due by period				
Contractual Obligations	**Total**	**Less than 1 year**	**1 – 3 years**	**3 – 5 years**	**More than 5 years**
Long-term obligations	$ 18,789	$ 7,080	$ 11,709	$ —	$ —
Interest commitment on long-term obligations	3,162	1,311	1,851	—	—
Operating lease obligations	1,847	1,782	65	—	—
Minimum purchase obligation	6,567	1,074	2,547	2,946	—
Clinical research study obligations	3,329	3,220	109	—	—
Total	$ 33,694	$ 14,467	$ 16,281	$ 2,946	$ —

Cash (used in) provided by operating, investing and financing activities for the years ended December 31, 2016 and 2015 is summarized as follows (in thousands):

	Years Ended December 31,	
	2016	2015
Net cash used in operating activities	$ (19,533)	$ (20,468)
Net cash provided by (used in) investing activities	64	(613)
Net cash provided by financing activities	17,609	20,797
Effect of exchange rate changes on cash and cash equivalents	82	—
Net decrease in cash and cash equivalents	$ (1,778)	$ (284)

Operating activities

Net cash used in operating activities for the year ended December 31, 2016 was $19.5 million. Overall, our operational cash use decreased during the year ended December 31, 2016 as compared to the same period in 2015 due primarily to a decrease in losses from operations (when adjusted for non-cash items) of $3.3 million offset by working capital givebacks of approximately $2.1 million.

Investing activities

Net cash provided by investing activities for the year ended December 31, 2016 resulted from $0.1 million in proceeds from sale of assets offset by cash outflows for purchases of property and equipment of $0.1 million. This cash outflow for purchases of property and equipment was $0.5 million lower than the same period in 2015 due to cash outflow reduction efforts implemented throughout 2016.

Financing Activities

The net cash provided by financing activities for the year ended December 31, 2016 related primarily to a sale of common stock through our Rights Offering and ATM offering program. The cash inflow from financing activities was approximately $3.2 million lower than the same period in 2015, primarily due to the fact that there was $7.3 million less in capital raised during the year ended December 31, 2016 as compared to the same period in 2015, a decrease of $4.9 million in proceeds for exercised warrants, an increase of $0.2 million in Joint Venture purchase payments to Olympus Corporation, and $9.2 million decrease in principal payments on long-term obligations and loan fees.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements (as defined by applicable regulations of the SEC) that are reasonably likely to have a current or future material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

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.

Revenue Recognition

In accordance with the Securities and Exchange Commission's guidance, 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 customers that have not developed a sufficient payment history with us or for whom a letter of credit is not in place at the time of the transaction, we defer revenues until collectability is reasonably assured.

For all sales, we use a binding purchase order or a signed agreement as evidence of an arrangement. If the other revenue recognition criteria are met, 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 where all revenue recognition criteria are not met, revenue is deferred and related inventory remains on our books.

Accounts Receivable

Accounts receivable are recorded at the invoiced amount and do not bear interest. Amounts collected on accounts receivable are included in net cash provided by operating activities in the consolidated statements of cash flows. The Company maintains an allowance for doubtful accounts for estimated losses inherent in its accounts receivable portfolio. In establishing the required allowance, management considers historical losses adjusted to take into account current market conditions and our customers' financial condition, the amount of receivables in dispute, and the current receivables aging and current payment patterns. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

Inventories

Inventories include the cost of material, labor, and overhead, and are stated at the lower of cost, determined on the first-in, first-out (FIFO) method, or market. We periodically evaluate our on-hand stock and make appropriate provisions for any stock deemed excess or obsolete. Manufacturing costs resulting from lower than "normal" production levels are expensed as incurred.

Impairment

We assess certain of our long-lived assets, such as property and equipment and intangible assets other than goodwill, for potential impairment when there is a change in circumstances that indicates carrying values of assets may not be recoverable. Such long-lived assets are deemed to be impaired when the undiscounted cash flows expected to be generated by the asset (or asset group) are less than the asset's carrying amount. Any required impairment loss would be measured as the amount by which the asset's carrying value exceeds its fair value, and would be recorded as a reduction in the carrying value of the related asset and a charge to operating expense.

Goodwill and Intangibles

Goodwill is reviewed for impairment annually or more frequently if indicators of impairment exist. We perform our impairment test annually during the fourth quarter. The impairment evaluation is performed assuming the we operate in a single operating segment and reporting unit. First we assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If, after assessing qualitative factors, we determine it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary. If deemed necessary, a two-step test is used to identify the potential impairment and to measure the amount of goodwill impairment, if any. The first step is to compare the fair value of the reporting unit with its carrying amount, including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill is considered not impaired; otherwise, there is an indication that goodwill may be impaired and the amount of the loss, if any, is measured by performing step two. Under step two, the impairment loss, if any, is measured by comparing the implied fair value of the reporting unit goodwill with the carrying amount of goodwill. There was no indication of impairment of goodwill for all periods presented.

Separable intangible assets that have finite useful lives are amortized over their respective useful lives.

Share-based compensation

The estimated fair value of share-based awards exchanged for employee and non-employee director services are expensed over the requisite service period and over the period during which the employee and non-employee director is required to provide service in exchange for the award. For purposes of calculating stock-based compensation, we estimate the fair value of stock options and shares issued under the Employee Stock Purchase Plan using a Black-Scholes option-pricing model. The determination of the fair value of share-based payment awards utilizing the Black-Scholes model is affected by our stock price and a number of assumptions, including expected volatility, expected life, risk-free interest rate and expected dividends. The expected volatility is based on the historical volatility of our common stock over the most recent period commensurate with the estimated expected term of the stock options. The expected life of the stock options is based on historical and other economic data trended into the future. The risk-free interest rate assumption is based on observed interest rates appropriate for the expected terms of our stock options. The dividend yield assumption is based on our history and expectation of no dividend payouts. The fair value of restricted stock agreements granted is based on the market price of our common stock on the day of the grant.

Recent Accounting Pronouncements

See Note 2 to the Consolidated Financial Statements included elsewhere herein for disclosure and discussion of new accounting standards.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 8. Financial Statemen ts and Supplementary Data

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders
Cytori Therapeutics, Inc.

We have audited the accompanying consolidated balance sheet of Cytori Therapeutics, Inc. (the "Company") as of December 31, 2016 and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for the year then ended. In connection with our audit of the consolidated financial statements, we have also audited the accompanying schedule of valuation and qualifying accounts listed in the accompanying index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedule. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Cytori Therapeutics, Inc. at December 31, 2016, and the results of its operations and its cash flows for the year then ended , in conformity with accounting principles generally accepted in the United States of America.

Also, in our opinion, the financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in material respects, the information set forth therein.

The accompanying consolidated financial statements and schedule have been prepared assuming that the Company will continue as a going concern. As described in Note 1 to the consolidated financial statements, the Company has suffered recurring losses and negative cash flows from operations that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ BDO USA, LLP
San Diego, California

March 24, 2017

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Cytori Therapeutics, Inc.:

We have audited the accompanying consolidated balance sheet of Cytori Therapeutics, Inc. and subsidiaries (the Company) as of December 31, 2015, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for the year ended December 31, 2015. In connection with our audit of the consolidated financial statements, we have also audited the accompanying schedule of valuation and qualifying accounts as of and for the year ended December 31, 2015. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Cytori Therapeutics, Inc. and subsidiaries as of December 31, 2015, and the results of their operations and their cash flows for the year ended December 31, 2015, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

The accompanying consolidated financial statements and financial statement schedule have been prepared assuming that the Company will continue as a going concern. As discussed in note 1 to the consolidated financial statements, the Company's recurring losses from operations and liquidity position raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in note 1. The consolidated financial statements and financial statement schedule do not include any adjustments that might result from the outcome of this uncertainty.

/s/ KPMG LLP

San Diego, California
March 11, 2016

CYTORI THERAPEUTICS, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and par value data)

	As of December31,	
	2016	**2015**
Assets		
Current assets:		
Cash and cash equivalents	$ 12,560	$ 14,338
Accounts receivable, net of reserves of $167 and $797 in 2016 and 2015, respectively	1,242	1,052
Restricted cash	350	—
Inventories, net	3,725	4,298
Other current assets	870	1,555
Total current assets	18,747	21,243
Property and equipment, net	1,157	1,631
Restricted cash	—	350
Other assets	2,336	1,521
Intangibles, net	8,447	9,031
Goodwill	3,922	3,922
Total assets	$ 34,609	$ 37,698
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 5,872	$ 6,687
Current portion of long-term obligations, net of discount	6,629	—
Joint venture purchase obligation	—	1,750
Total current liabilities	12,501	8,437
Deferred revenues	97	105
Long-term deferred rent and other	17	269
Long-term obligations, net of discount, less current portion	11,008	16,681
Total liabilities	23,623	25,492
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized; 13,500 shares issued; no shares outstanding in 2016 and 2015	—	—
Common stock, $0.001 par value; 75,000,000 shares authorized; 21,707,890 and 13,003,893 shares issued and outstanding in 2016 and 2015, respectively	22	13
Additional paid-in capital	388,769	368,214
Accumulated other comprehensive income	1,258	996
Accumulated deficit	(379,063)	(357,017)
Total stockholders' equity	10,986	12,206
Total liabilities and stockholders' equity	$ 34,609	$ 37,698

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE CONSOLIDATED FINANCIAL STATEMENTS

CYTORI THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)

	For the Years Ended December 31,	
	2016	2015
Product revenues	$ 4,656	$ 4,838
Cost of product revenues	2,715	3,186
Gross profit	1,941	1,652
Development revenues:		
Government contracts and other	6,724	6,821
	6,724	6,821
Operating expenses:		
Research and development	16,197	19,000
Sales and marketing	3,611	2,662
General and administrative	8,563	9,765
Change in fair value of warrant liabilities	—	(7,668)
Total operating expenses	28,371	23,759
Operating loss	(19,706)	(15,286)
Other income (expense):		
Loss on debt extinguishment	—	(260)
Interest income	19	9
Interest expense	(2,592)	(3,379)
Other income, net	233	172
Total other expense	(2,340)	(3,458)
Net loss	$ (22,046)	$ (18,744)
Beneficial conversion feature for convertible preferred stock	—	(661)
Net loss allocable to common stockholders	$ (22,046)	$ (19,405)
Basic and diluted net loss per share allocable to common stockholders	$ (1.28)	$ (2.07)
Basic and diluted weighted average shares used in calculating net loss per share allocable to common stockholders	17,290,933	9,386,488
Comprehensive loss:		
Net loss	$ (22,046)	$ (18,744)
Other comprehensive income – foreign currency translation adjustments	262	296
Comprehensive loss	$ (21,784)	$ (18,448)

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE CONSOLIDATED FINANCIAL STATEMENTS

CYTORI THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2016 AND 2015
(in thousands, except share data)

	Convertible preferred stock		Common stock		Additional paid-in	Accumulated other comprehensive	Accumulated	Total stockholders' equity
	Shares	Amount	Shares	Amount	capital	(loss) income	deficit	(deficit)
Balance at December 31, 2014	5,311	$ —	6,623,225	$ 7	$ 331,864	$ 700	$ (338,273)	$ (5,702)
Share-based compensation	—	—	—	—	2,041	—	—	2,041
Issuance of common stock under stock option plan and employee stock purchase plan	—	—	15,437	—	27	—	—	27
Conversion of Series A 3.6% Convertible Preferred Stock into common stock	(5,311)	—	680,943	1	(3)	—	—	(2)
Issuance of common stock under stock warrant agreement, net	—	—	3,123,577	3	22,810	—	—	22,813
Sale of common stock, net	—	—	2,560,711	2	10,699	—	—	10,701
Allocation of fair value for debt-related warrants	—	—	—	—	776	—	—	776
Foreign currency translation adjustment and accumulated other comprehensive income	—	—	—	—	—	296	—	296
Net loss	—	—	—	—	—	—	(18,744)	(18,744)
Balance at December 31, 2015	—	—	13,003,893	13	368,214	996	(357,017)	12,206
Share-based compensation	—	—	—	—	1,080	—	—	1,080
Issuance of common stock under employee stock purchase plan	—	—	30,744	—	6	—	—	6
Sale of common stock, net	—	—	8,673,253	9	19,469	—	—	19,478
Foreign currency translation adjustment and accumulated other comprehensive income	—	—	—	—	—	262	—	262
Net loss	—	—	—	—	—		(22,046)	(22,046)
Balance at December 31, 2016	—	$ —	21,707,890	$ 22	$ 388,769	$ 1,258	$ (379,063)	$ 10,986

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE CONSOLIDATED FINANCIAL STATEMENTS

CYTORI THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Years Ended December 31,	
	2016	**2015**
Cash flows from operating activities:		
Net loss	$ (22,046)	$ (18,744)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,182	1,093
Amortization of deferred financing costs and debt discount	954	979
Joint Venture acquisition obligation accretion	24	365
Provision for doubtful accounts	—	(105)
Provision for expired inventory	172	—
Change in fair value of warrants	—	(7,668)
Share-based compensation expense	1,080	2,041
(Gain) loss on asset disposal	(127)	8
Loss on debt extinguishment	—	260
Increases (decreases) in cash caused by changes in operating assets and liabilities:		
Accounts receivable	(179)	328
Inventories	471	490
Other current assets	633	(637)
Other assets	(764)	363
Accounts payable and accrued expenses	(673)	1,045
Deferred revenues	(8)	3
Long-term deferred rent	(252)	(289)
Net cash used in operating activities	(19,533)	(20,468)
Cash flows from investing activities:		
Purchases of property and equipment	(67)	(611)
Expenditures for intellectual property	—	(13)
Proceeds from sale of assets	131	11
Net cash provided by (used in) investing activities	64	(613)
Cash flows from financing activities:		
Principal payments on long-term obligations	—	(25,032)
Proceeds from long-term obligations	—	17,700
Debt issuance costs and loan fees	—	(1,854)
Joint Venture purchase payments	(1,774)	(1,623)
Proceeds from exercise of employee stock options and warrants	—	4,997
Proceeds from sale of common stock	21,467	29,054
Costs from sale of common stock	(2,084)	(2,370)
Dividends paid on preferred stock	—	(75)
Net cash provided by financing activities	17,609	20,797
Effect of exchange rate changes on cash and cash equivalents	82	—
Net decrease in cash and cash equivalents	(1,778)	(284)
Cash and cash equivalents at beginning of period	14,338	14,622
Cash and cash equivalents at end of period	$ 12,560	$ 14,338
Supplemental disclosure of cash flows information:		
Cash paid during period for:		
Interest	$ 1,618	$ 1,994
Final payment fee on long-term debt	$ —	$ 1,839
Supplemental schedule of non-cash investing and financing activities:		
Issuance costs paid in common stock	$ 189	$ —
Conversion of preferred stock into common stock	$ —	$ 10
Declared dividend related to preferred stock	$ —	$ 3
Fair value of warrants allocated to additional paid-in capital	$ —	$ 776

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Operations

The Company

Cytori Therapeutics, Inc. (NASDAQ: CYTX) develops cell therapies uniquely formulated and optimized for specific diseases and medical conditions with a primary focus on impaired hand function in scleroderma, in addition to our other pipeline areas, such as osteoarthritis of the knee, stress urinary incontinence, and full thickness thermal burns including those complicated by radiation exposure.

Principles of Consolidation

The accompanying consolidated financial statements include our accounts and those of our subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

We have five wholly-owned subsidiaries located in Japan, United Kingdom, Switzerland, India and Spain that have been established primarily to support our sales and marketing activities in these regions.

Reverse Stock Split

On May 10, 2016, following stockholder and Board approval, an amendment (the "Amendment") to the Company's amended and restated certificate of incorporation, as amended, was filed and declared effective, which Amendment effectuated a one-for-fifteen (1:15) reverse stock split of the Company's (i) outstanding common stock, and (ii) common stock reserved for issuance upon exercise of outstanding warrants and options (the "1:15 Reverse Stock Split"). Upon effectiveness of the 1:15 Reverse Stock Split, the number of shares of the Company's common stock (x) issued and outstanding decreased from approximately 200 million shares (as of May 10, 2016) to approximately 13.3 million shares; (y) reserved for issuance upon exercise of outstanding warrants and options decreased from approximately 16 million shares to approximately 1.1 million shares, and (z) reserved but unallocated under our current equity incentive plans (including the stockholder-approved share increase to the Company's 2014 Equity Incentive Plan) decreased from approximately 6.5 million common shares to approximately 0.4 million common shares. In connection with the 1:15 Reverse Stock Split, the Company also decreased the total number of its authorized shares of common stock from 290 million to 75 million. The number of authorized shares of preferred stock remained unchanged. Following the 1:15 Reverse Stock Split, certain reclassifications have been made to the prior periods' financial statements to conform to the current period's presentation. The Company adjusted stockholders' equity to reflect the 1:15 Reverse Stock Split by reclassifying an amount equal to the par value of the shares eliminated by the split from common stock to the additional paid-in capital during the first quarter of fiscal 2016, resulting in no net impact to stockholders' equity on our consolidated balance sheets. The Company's shares of common stock commenced trading on a split-adjusted basis on May 12, 2016. Proportional adjustments for the reverse stock split were made to the Company's outstanding stock options, warrants awards issued and available under and equity incentive plans for all periods presented.

Certain Risks and Uncertainties

Our prospects are subject to the risks and uncertainties frequently encountered by companies in the early stages of development and commercialization, especially those companies in rapidly evolving and technologically advanced industries such as the biotech/medical device field. Our future viability largely depends on our ability to complete development of new products and receive regulatory approvals for those products. No assurance can be given that our new products will be successfully developed, regulatory approvals will be granted, or acceptance of these products will be achieved. The development of medical devices for specific therapeutic applications is subject to a number of risks, including research, regulatory and marketing risks. There can be no assurance that our development stage products will overcome these hurdles and become commercially viable and/or gain commercial acceptance.

Liquidity and Going Concern

We incurred net losses of $22.0 million and $18.7 million for the years ended December 31, 2016 and 2015, respectively. We have an accumulated deficit of $379.1 million as of December 31, 2016. Additionally, we have used net cash of $19.5 million and $20.5 million to fund our operating activities for the years ended December 31, 2016 and 2015, respectively. These factors raise substantial doubt about the Company's ability to continue as a going concern.

Further, our Loan and Security Agreement, or the Loan and Security Agreement, with Oxford Finance, L CC, or Oxford, as further described in Note 8, requires to maintain a minimum of $5.0 million in unrestricted cash and cash equivalents on hand to avoid an event of default under the Loan and Security Agreement. Based on our cash and cash equivalents on ha nd of approximately $12.6 million at December 31, 2016, and our obligation to make payments of principal of $0.6 million plus accrued interest in monthly installments, we estimate that we must raise additional capital and/or obtain a waiver or restructure the Loan and Security Agreement on or before May 2017 to avoid defaulting under our $5.0 million minimum cash/cash equivalents covenant.

To date, these operating losses have been funded primarily from outside sources of invested capital including our recently completed Lincoln Park Purchase Agreement with Lincoln Park Capital Fund, LLC ("Lincoln Park") and the Rights Offering (each defined below), our at-the-market ("ATM") equity facility, the Loan and Security Agreement and gross profits. We have had, and we will likely continue to have, an ongoing need to raise additional cash from outside sources to fund our future clinical development programs and other operations.

On June 15, 2016, we closed a rights offering originally filed under Form S-1 registration statement in April 2016 (the "Rights Offering"). Pursuant to the Rights Offering, we sold an aggregate of 6,704,852 units consisting of a total of 6,704,852 shares of common stock and 3,352,306 warrants, with each warrant exercisable for one share of common stock at an exercise price of $3.06 per share, resulting in total gross proceeds to Cytori of $17.1 million. See Note 11 for further discussion on the Rights Offering.

On December 22, 2016, we entered into a purchase agreement and a registration rights agreement, with Lincoln Park pursuant to which we have the right to sell to Lincoln Park and Lincoln Park is obligated to purchase up to $20.0 million in amounts of shares, of the Company's common stock, over the 30-month period commencing on the date that a registration statement, which the Company filed with the Securities and Exchange Commission (the "SEC") on December 30, 2016. See Note 11 for further discussion on the Lincoln Park agreement.

Pursuant to these securities transactions and related equity issuances, as well as anticipated gross profits and potential outside sources of capital, we believe we have sufficient cash to fund operations through Q2 2017. We continue to seek additional capital through product revenues, strategic transactions, including extension opportunities under our awarded U.S. Department of Health and Human Service's Biomedical Advanced Research and Development Authority ("BARDA") contract, and from other financing alternatives. Without additional capital, current working capital and cash generated from sales will not provide adequate funding for research, sales and marketing efforts and product development activities at their current levels. If sufficient capital is not raised, we will at a minimum need to significantly reduce or curtail our research and development and other operations, and this could negatively affect our ability to achieve corporate growth goals.

Should we be unable to raise additional cash from outside sources, this will have a material adverse impact on our operations.

The accompanying consolidated financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to its ability to continue as a going concern.

Reclassifications

Certain immaterial reclassifications have been made to certain of the prior years' consolidated financial statements to conform to the current year presentation.

2. Summary of Significant Accounting Policies

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, reviewing goodwill and intangible assets for impairment, determining the assumptions used in measuring share-based compensation expense, measuring accretion expense related to our acquisition of the joint venture, and valuing allowances for doubtful accounts and inventory reserves.

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.

Cash and cash equivalents

We consider all highly liquid investments with maturities of three months or less at the time of purchase to be cash equivalents.

Cash and cash equivalents includes cash in readily available checking and savings accounts. We held no investments as of December 31, 2016 and 2015. We maintain our cash at insured financial institutions.

Restricted Cash

Restricted cash consists of cash invested in a certificate of deposit used as collateral for the issuance of a letter of credit pursuant to a lease agreement entered into on April 2, 2010 (amended November 4, 2011) for leasing of property at 3020 and 3030 Callan Road, San Diego, California. The lease agreement required us to execute a letter of credit for $0.4 million naming the landlord as a beneficiary. It is required by the landlord that we maintain $0.4 million as restricted cash for the duration of the lease, which expires October 31, 2017.

Accounts Receivable

Accounts receivable are recorded at the invoiced amount and do not bear interest. The Company periodically assesses the collectability of accounts receivable on a specific customer basis considering factors such as evaluation of collectability, historical collection experience, the age of accounts receivable and other currently available evidence of the collectability, and records an allowance for doubtful accounts for the estimated uncollectible amount. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

Inventories

Inventories include the cost of material, labor, and overhead related to Celution devices, consumable kits, and reagents, and are stated at the lower of cost, determined on the first-in, first-out (FIFO) method, or market. We periodically evaluate our on-hand stock and make appropriate provisions for any stock deemed excess or obsolete. Manufacturing costs resulting from lower than “normal” production levels are expensed as incurred.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation expense, which includes the amortization of capitalized leasehold improvements, is provided for on a straight-line basis over the estimated useful lives of the assets, or the life of the lease, whichever is shorter, and range from three to five years. When assets are sold or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss, if any, is included in operations. Maintenance and repairs are charged to operations as incurred.

Impairment

We assess certain of our long-lived assets, such as property and equipment and intangible assets other than goodwill, for potential impairment when there is a change in circumstances that indicates carrying values of assets may not be recoverable. Such long-lived assets are deemed to be impaired when the undiscounted cash flows expected to be generated by the asset (or asset group) are less than the asset’s carrying amount. Any required impairment loss would be measured as the amount by which the asset’s carrying value exceeds its fair value, and would be recorded as a reduction in the carrying value of the related asset and a charge to operating expense. We recognized no impairment losses during any of the periods presented in these financial statements.

Goodwill and Intangibles

Goodwill is reviewed for impairment annually or more frequently if indicators of impairment exist. We perform our impairment test annually during the fourth quarter. The impairment evaluation is performed assuming the Company operates in a single operating segment and reporting unit. First the Company assesses qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If, after assessing qualitative factors, the Company determines it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary. If deemed necessary, a two-step test is used to identify the potential impairment and to measure the amount of goodwill impairment, if any. The first step is to compare the fair value of the reporting unit with its carrying amount, including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill is considered not impaired; otherwise, there is an indication that goodwill may be impaired and the amount of the loss, if any, is measured by performing

step two. Un der step two, the impairment loss, if any, is measured by comparing the implied fair value of the reporting unit goodwill with the carrying amount of goodwill. There was no indication of impairment of goodwill for all periods presented.

Separable intangible assets that have finite useful lives are amortized over their respective useful lives.

As part of the May 2013 acquisition of the Joint Venture (see Note 4), we acquired intangible assets which 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. The technology was valued at $9.4 million and is being amortized on a straight-line basis over a useful life of eleven years, commensurate with the expected cash flows. The amortization expense was $0.6 million and $0.4 million for the years ended December 31, 2016 and 2015, respectively, and was included in cost of product revenue on the consolidated statements of operations. The estimated aggregate amortization expense will be $1.2 million for 2017, $1.2 million for 2018 and $6.0 million thereafter. Accumulated amortization on the intangible assets was $1.2 million as of December 31, 2016 and $0.6 million as of December 31, 2015.

The changes in the carrying amounts of finite-life intangible assets and goodwill for the years ended December 31, 2016 and 2015 are as follows (in thousands):

	December 31, 2016
Other intangibles, net:	
Beginning balance	$ 9,031
Increase	—
Amortization	(584)
Ending balance	8,447
Goodwill, net:	
Beginning balance	3,922
Increase (decrease)	—
Ending balance	3,922
Total goodwill and other intangibles, net	$ 12,369

	December 31, 2015
Other intangibles, net:	
Beginning balance	$ 9,415
Increase	13
Amortization	(397)
Ending balance	9,031
Goodwill, net:	
Beginning balance	3,922
Increase (decrease)	—
Ending balance	3,922
Total goodwill and other intangibles, net	$ 12,953

Warrant Liability

In connection with the October 2014 Securities Purchase Agreement, the Company issued common stock purchase warrants (the "October 2014 Warrants") to certain institutional investors with certain exercise price reset features. Each warrant had an initial exercise price of $0.5771 per share, was exercisable six months and one day after the date of issuance and was to expire five years from the date on which it was initially exercisable. Pursuant to the second closing of the May 2015 Securities Purchase Agreement, the exercise price of these warrants was reset to $0.3263. The initial fair value of the liability associated with these warrants was $10.0 million and it decreased to $3.3 million as of December 17, 2015 when these warrants were cashless exercised by all holders.

In May 2015, the Company entered into a Securities Purchase Agreement with certain institutional investors pursuant to which the Company agreed to sell up to $25 million of units, with each unit consisting of one share of its common stock and one warrant to purchase one share of its common stock, in a registered direct offering. The May 2015 Securities Purchase Agreement contemplated two closings, the first of which occurred on May 8, 2015, the second of which occurred upon satisfaction of certain conditions precedent, including, but not limited to, receipt of required stockholder approval, on August 27, 2015. Each warrant issued at the initial closing (the "May 2015 Warrants") had an initial exercise price of $1.02 per share, was exercisable six months and one day after the date of issuance and expires five years from the date on which it is initially

exercisable. Each warrant issued at the second closing (the "August 2015 Warrants") had an initial exercise price of $0.401 per share, and was to expire five years from the date of issuance. The initial fair value of the liability associated with the May 2015 Warrants was $14.3 million and it decreased to $5.0 million as of December 17, 2015 when these warrants were cashless exercised by all holders . The initial fair value of the liability associated with the August 2015 Warrants was $1.6 million, and it decreased to $1.5 million as of December 17, 2015, when these warrants were cashless exercised by all holders.

On December 17, 2015, the Company and the holders of October 2014 Warrants agreed to amend the October 2014 Warrants pursuant to an Amendment to Common Stock Purchase Warrant (the "2014 Amendment"). Also on December 17, 2015, the Company and the holders of the May 2015 Warrants and the August 2015 Warrants (collectively the "2015 Warrants") agreed to amend the 2015 Warrants pursuant to an Amendment to Series A-1 Warrant to Purchase Common Stock and Amendment to Series A-2 Warrant to Purchase Common Stock, respectively (the "2015 Amendment" and, together with the 2014 Amendment, the "Warrant Amendments"). The Warrant Amendments provide that the holders may exercise their warrants on a "cashless exercise" basis in whole on or prior to December 31, 2015, whereby each exercising holder of the amended 2015 Warrants would receive 0.75 shares for each warrant share exercised and each exercising holder of the amended 2014 Warrants would receive 0.69 shares for each warrant share exercised. In addition, the Warrant Amendments removed certain provisions which provided that the exercise price of the Warrants would be reset in the event of certain equity issuances by the Company for a price below the exercise price of the Warrants as of the time of such issuance. All warrants were cashless exercised on or before December 31, 2015.

The warrants were not traded in an active securities market and, as such, the estimated fair value as of their exercise date on December 17, 2015 was determined by using the Monte Carlo option pricing model. The 2014 and 2015 warrants were settled on or prior to December 31, 2015.

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. We evaluate customers that have not developed a sufficient payment history with us or for whom a letter of credit is not in place at the time of the transaction and defer revenues until collectability is reasonably assured.

For all sales, we use a binding purchase order or a signed agreement as evidence of an arrangement. If the other revenue recognition criteria are met, 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 where all revenue recognition criteria are not met, revenue is deferred and related inventory remains on our books.

Concentration of Significant Customers & Geographical Sales

For the year ended December 31, 2016, our sales were concentrated with respect to two distributors and three direct customers, which comprised 65% of our product revenue recognized. Two direct customers accounted for 57% of total outstanding accounts receivable (excluding receivables from BARDA) as of December 31, 2016.

For the year ended December 31, 2015, our sales were concentrated with respect to one distributor and four direct customers, which comprised 63% of our product revenue recognized. Two direct customers accounted for 73% of total outstanding accounts receivable (excluding receivables from BARDA) as of December 31, 2015.

Product revenues, classified by geographic location, are as follows (in thousands):

	Years ended December 31,			
	2016		2015	
	Product Revenues	% of Total	Product Revenues	% of Total
Americas	$ 936	20%	$ 982	20%
Japan	3,279	71%	2,394	50%
EMEA	379	8%	675	14%
Asia Pacific	62	1%	787	16%
Total product revenues	$ 4,656	100%	$ 4,838	100%

Development Revenues

We earn revenue for performing tasks under research and development agreements with governmental agencies like BARDA. 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. We recognized $6.7 million and $6.8 million in BARDA revenue for the years ended December 31, 2016 and 2015, respectively.

Research and Development

Research and development expenditures, which are charged to operations in the period incurred, include costs associated with the design, development, testing and enhancement of our products, regulatory fees, the purchase of laboratory supplies, and pre-clinical and clinical studies as well as salaries and benefits for our research and development employees.

Also included in research and development expenditures are costs incurred to support the government reimbursement contract, including $6.3 million and $6.3 million of qualified expenses that were incurred for the years ended December 31, 2016 and 2015, related to our government contract with BARDA.

Deferred Financing Costs and Other Debt-Related Costs

Deferred financing costs are capitalized, recorded as an offset to debt balances and amortized to interest expense over the term of the associated debt instrument using the effective interest method. If the maturity of the debt is accelerated because of default or early debt repayment, then the amortization would be accelerated.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income (loss) in the years in which those temporary differences are expected to be recovered or settled. Due to our history of losses, a full valuation allowance has been recognized against our deferred tax assets.

The Company's policy is to recognize interest and penalties related to income tax matters in income tax expense. For the years ended December 31, 2016 and 2015, the Company has not recorded any interest or penalties related to income tax matters. The Company does not foresee any material changes to unrecognized tax benefits within the next twelve months.

Share-Based Compensation

We recognize the fair value of all share-based payment awards in our statements of operations over the requisite vesting period of each award, which approximates the period during which the employee and non-employee director is required to provide service in exchange for the award. We estimate the fair value of these options using the Black-Scholes option pricing model using assumptions for expected volatility, expected term, and risk-free interest rate. Expected volatility is based primarily on historical volatility and is computed using daily pricing observations for recent periods that correspond to the expected term of the options. The expected term is calculated based on historical data for and applied to all employee awards as a single group as we do not expect (nor does historical data suggest) substantially different exercise or post-vesting termination behavior amongst our employee population. The risk-free interest rate is the interest rate for treasury instruments with maturities that approximate the expected term.

Segment Information

For the years ended December 31, 2016 and 2015, all of our financial results relate to cell therapy, therefore we report our results in one operating segment.

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 years ended December 31, 2016 and 2015, as their inclusion would be antidilutive. Potentially dilutive securities excluded from the calculations of diluted loss per share were 4.2 million as of December 31, 2016, which includes 3.6 million outstanding warrants and 0.6 million options and restricted stock awards. Potentially dilutive securities excluded from the calculations of diluted loss per share were 12.3 million as of December 31, 2015.

Recent Accounting Pronouncements

In May 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-12, *Revenue from Contracts with Customers* , the amendment of which addressed narrow-scope improvements to the guidance on collectability, noncash consideration, and completed contracts at transition as well as providing a practical expedient for contract modifications. In April 2016 and March 2016, the FASB issued ASU No. 2016-10 and ASU No. 2016-08, respectively, the amendments of which further clarified aspects of Topic 606: identifying performance obligations and the licensing and implementation guidance and intended to improve the operability and understandability of the implementation guidance on principal versus agent considerations. The FASB issued the initial release of Topic 606 in ASU No. 2014-09, which requires entities to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Entities may use a full retrospective approach or report the cumulative effect as of the date of adoption. On July 9, 2015, the FASB voted to defer the effective date by one year to December 15, 2017 for interim and annual reporting periods beginning after that date. Early adoption of ASU 2016-10 is permitted but not before the original effective date (annual periods beginning after December 15, 2017). We are currently in the process of evaluating our various contracts and revenue streams subject to this update but have not completed our assessment and, therefore, have not yet concluded on whether the adoption of this update will have a material effect on our consolidated financial statements and related disclosures.

In August 2014, the FASB issued ASU 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* . ASU 2014-15 requires management to evaluate relevant conditions, events and certain management plans that are known or reasonably knowable that when, considered in the aggregate, raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued, for both annual and interim periods. ASU 2014-15 also requires certain disclosures around management's plans and evaluation, as well as the plans, if any, that are intended to mitigate those conditions or events that will alleviate the substantial doubt. ASU 2014-15 is effective for annual reporting periods, and interim periods within those periods, ending after December 15, 2016. The Company adopted this guidance to assess going concern at December 31, 2016 and its liquidity disclosures reflect the requirements of the new standard.

In July 2015, FASB issued ASU 2015-11, *Simplifying the Measurement of Inventory* . This update applies to companies that measure inventory on a first in, first out, or FIFO, or average cost basis. Under this update, companies are to measure their inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion. The amendments in this update are effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2016 with earlier application permitted as of the beginning of an interim or annual reporting period. The adoption of ASU 2015-11 will not have a material impact on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases* . Under this new guidance, at the commencement date, lessees will be required to recognize (i) a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis and (ii) a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. This guidance is not applicable for leases with a term of 12 months or less. The new standard is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2018, with early adoption permitted. We are currently evaluating the impact that this standard will have on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, *Improvements to Employee Share-Based Payment Accounting* , which involves several aspects of the accounting for stock-based payment transactions, including the income tax consequences, classification of

awards as either equity or liabilities, an d classification on the statement of cash flows. This new guidance will require all income tax effects of awards to be recognized as income tax expense or benefit in the income statement when the awards vest or are settled, as opposed to additional paid-in -capital where it is currently recorded. It also will allow an employer to repurchase more of an employee's shares than it can today for tax withholding purposes without triggering liability accounting. All tax-related cash flows resulting from stock-based payments are to be reported as operating activities on the statement of cash flows. The guidance also allows a Company to make a policy election to either estimate the number of awards that are expected to vest or account for forfeitures as they occur. Th is new standard is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2016, with early adoption permitted. We have elected to keep our policy consistent for the application of a forfeiture rate an d, as such, the adoption of this standard will not have a material impact on our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of certain cash receipts and cash payments* , which addresses the following eight specific cash flow issues: Debt prepayment or debt extinguishment costs; settlement of zero-coupon debt instruments or other debt instruments with coupon interest rates that are insignificant in relation to the effective interest rate of the borrowing; contingent consideration payments made after a business combination; proceeds from the settlement of insurance claims; proceeds from the settlement of corporate-owned life insurance policies (including bank-owned life insurance policies); distributions received from equity method investees; beneficial interests in securitization transactions; and separately identifiable cash flows and application of the predominance principle. The new standard is effective for annual reporting periods, and interim periods within those periods, beginning after December 15, 2017, with early adoption permitted. We do not anticipate that the adoption of ASU 2016-15 will have a material impact on our consolidated financial statements.

In November 2016, the FASB issued Accounting Standards Update No. 2016-18, *Restricted Cash* , which requires entities to show the changes in the total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash and restricted cash equivalents in the statement of cash flows. The amendments in this update should be applied using a retrospective transition method to each period presented. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those fiscal years with early adoption permitted, including adoption in an interim period. The adoption of this standard will change the presentation of our statement of cash flows to include our restricted cash balance. We are assessing whether to adopt the new guidance early in 2017.

In January 2017, the FASB issued Accounting Standards Update No. 2017-01, *Clarifying the Definition of a Business* , which clarifies and provides a more robust framework to use in determining when a set of assets and activities is a business. The amendments in this update should be applied prospectively on or after the effective date. This update is effective for annual periods beginning after December 15, 2017, and interim periods within those periods. Early adoption is permitted for acquisition or deconsolidation transactions occurring before the issuance date or effective date and only when the transactions have not been reported in issued or made available for issuance financial statements. We do not expect the adoption to have any significant impact on our consolidated financial statements, and we are in the process of determining whether to adopt the new guidance early.

In February 2017, the FASB recently issued ASU 2017-04, *Simplifying the Test for Goodwill Impairment* , to simplify how all entities assess goodwill for impairment by eliminating Step 2 from the goodwill impairment test. As amended, the goodwill impairment test will consist of one step comparing the fair value of a reporting unit with its carrying amount. An entity should recognize a goodwill impairment charge for the amount by which the reporting unit's carrying amount exceeds its fair value. This update is effective for annual periods beginning after December 15, 2019, and interim periods within those periods. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. We do not anticipate that the adoption of ASU 2017-04 will have a material impact on our consolidated financial statements.

3. Agreement with Lorem Vascular

On October 29, 2013, we entered into an agreement with Lorem Vascular to commercialize Cytori Cell Therapy (OICH-D3) for the cardiovascular, renal and diabetes markets, in China, Hong Kong, Malaysia, Singapore and Australia (License/Supply Agreement), and a Common Stock Purchase Agreement. On January 30, 2014, we entered into the Amended and Restated License/Supply Agreement with Lorem Vascular (the "Restated Agreement") which restated the License/Supply Agreement in its entirety and expanded the licensed field to all uses excepting alopecia (hair loss). Under the Restated Agreement, Lorem Vascular committed to pay up to $500 million in license fees in the form of revenue milestones. In addition, Lorem Vascular is required to pay us 30% of their gross profits in China, Hong Kong and Malaysia for the term of the agreement. In addition, Lorem Vascular has agreed to purchase the Cytori Celution® System and consumables under the Restated Agreement. Pursuant to the related Common Stock Purchase Agreement, Cytori sold Lorem Vascular 8.0 million shares of Cytori common stock at

$3.00 per share for a total of $24.0 million. The equity purchased was closed in two equal installments, in Novembe r 2013 and January 2014.

Lorem Vascular initially purchased approximately $1.8 million in Celution® devices and consumables in December 2013. In addition to this purchase, upon achieving regulatory clearance from the Chinese Food and Drug Administration ("CFDA"), Cytori's license agreement with Lorem Vascular obligates Lorem Vascular to purchase an opening order of 23 Celution Systems and 1,100 Celution Consumable Sets. Class I regulatory clearance was granted in April 2015. There were no business transactions with Lorem Vascular during the year ended December 31, 2016. As of December 31, 2015, Lorem Vascular has partially satisfied this purchase order.

4. Transactions with Olympus Corporation

Under our Joint Venture Termination Agreement ("Termination Agreement"), dated May 8, 2013, with Olympus Corporation ("Olympus"), we were required to pay Olympus a total purchase price of $6.0 million within two years of the date of the Termination Agreement. Pursuant to amendments to the Termination Agreement, dated April 30, 2015 and January 8, 2016, the Company's repayment obligations were extended through May 8, 2016. We made payments under the Termination Agreement totaling approximately $4.2 million through December 31, 2015, as well as separate payments of $0.5 million each in January 2016 and April 2016, and paid the remaining balance of $0.8 million before the May 8, 2016 due date. There were no outstanding obligations to Olympus as of December 31, 2016.

5. 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.

As of December 31, 2016 and 2015, we did not have any assets or liabilities measured at fair value presented on our balance sheets.

The 2014 and 2015 warrants included exercise price reset features (down-round protection) and were accounted for as liabilities, with changes in the fair value included in net loss for the respective periods. Because some of the inputs to our valuation model were either not observable or were not derived principally from or corroborated by observable market data by correlation or other means, the warrant liability was classified as Level 3 in the fair value hierarchy. All of these warrants were cashless exercised on or before December 31, 2015.

The following table summarizes the final valuation pertaining to the warrants that were previously included in our Level 3 warrant liabilities (in thousands):

Warrant liability	December 31, 2015
Balance as of December 31, 2014	$ 9,793
Additions to warrant liability	15,979
Exercised warrants	(18,104)
Change in fair value	(7,668)
Balance as of December 31, 2015	$ —

Financial Instruments

We disclose fair value information about all financial instruments, whether or not recognized in the balance sheets, for which it is practicable to estimate fair value. The disclosures of estimated fair value of financial instruments at December 31, 2016 and 2015, 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 h ave 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.

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 December 31, 2016 and 2015, the aggregate fair value and the carrying value of the Company's long-term debt were as follows (in thousands):

	December 31, 2016		December 31, 2015	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Debt	$ 17,611	$ 17,637	$ 16,844	$ 16,681

Carrying value is net of debt discount of $1.2 million and $2.1 million as of December 31, 2016 and 2015, respectively.

The fair value of debt is classified as Level 3 in the fair value hierarchy as some of the inputs, primarily the effective interest rate, 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.

Nonfinancial Assets and Liabilities

We apply fair value techniques on a non-recurring basis associated with: (1) valuing potential impairment losses related to goodwill which are accounted for pursuant to the authoritative guidance for intangibles—goodwill and other; and (2) valuing potential impairment losses related to long-lived assets which are accounted for pursuant to the authoritative guidance for property, plant and equipment.

6. Composition of Certain Financial Statement Captions

Inventories, net

As of December 31, 2016 and 2015, inventories, net, were comprised of the following (in thousands):

	December 31,	
	2016	2015
Raw materials	$ 885	$ 1,009
Work in process	1,021	816
Finished goods	1,819	2,473
	$ 3,725	$ 4,298

Other Current Assets

As of December 31, 2016 and 2015, other current assets were comprised of the following (in thousands):

	December 31,	
	2016	2015
Prepaid supplies, current	$ 734	$ 995
Prepaid insurance	83	300
Other receivables	53	260
	$ 870	$ 1,555

Property and Equipment, net

As of December 31, 2016 and 2015, property and equipment, net, were comprised of the following (in thousands):

	December 31,	
	2016	2015
Manufacturing and development equipment	$ 4,256	$ 5,464
Office and computer equipment	1,953	1,939
Leasehold improvements	3,399	3,391
	9,608	10,794
Less accumulated depreciation	(8,451)	(9,163)
	$ 1,157	$ 1,631

Depreciation expense totaled $0.7 million and $0.7 million for the years ended December 31, 2016 and 2015, respectively.

Other Assets

As of December 31, 2016 and 2015, other assets were comprised of the following (in thousands):

	December 31,	
	2016	2015
Prepaid supplies, long-term	$ 1,838	$ 996
Deposits	498	525
	$ 2,336	$ 1,521

Accounts Payable and Accrued Expenses

As of December 31, 2016 and 2015, accounts payable and accrued expenses were comprised of the following (in thousands):

	December 31,	
	2016	2015
Accrued expenses	$ 1,752	$ 2,022
Accounts payable	1,332	1,009
Accrued payroll and bonus	989	1,058
Accrued legal fees	614	372
Accrued vacation	502	573
Accrued R&D studies	347	1,117
Deferred rent	215	221
Accrued accounting fees	121	315
	$ 5,872	$ 6,687

7. 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 is estimated based on current study progress. As of December 31, 2016, we have clinical research study obligations of $3.3 million, $3.2 million of which are expected to be complete within a year. Should the timing of the clinical trials change, the timing of the payment of these obligations would also change.

We lease facilities for our headquarters office location as well as international office locations. As of December 31, 2016, we have remaining lease obligations of $1.8 million, all of which is expected to be completed within a year. Rent expense, which includes common area maintenance, for the years ended December 31, 2016 and 2015 was $2.5 million and $2.5 million, respectively.

We are party to an agreement with Roche Diagnostics Corporation, our sole supplier of reagents, whi ch requires us to make certain product purchase minimums. Pursuant to the agreement, as of December 31, 2016, we have a minimum purchase obligation as follows:

Years Ending December 31,	Obligation
2017	$ 1,074
2018	1,074
2019	1,473
2020	1,473
2021	1,473
Total	$ 6,567

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.

8. Long-term Obligations

On September 29, 2014 we entered into a 2nd Amendment to the 2013 Loan and Security Agreement (the "2013 Loan Agreement") with Oxford and Silicon Valley Bank. Pursuant to the amended 2013 Loan Agreement, and we were provided a conditional waiver of principal payments subject to meeting certain capital raise requirements, which we achieved in October. The waiver of principal payments continued through April 1, 2015 and we were then required to make payments of principal and accrued interest in equal monthly installments sufficient to amortize the Term Loan through the maturity date.

On May 29, 2015, we entered into the Loan and Security Agreement, dated May 29, 2015 (the "Loan and Security Agreement"), with Oxford, pursuant to which Oxford funded an aggregate principal amount of $17.7 million ("Term Loan"), subject to the terms and conditions set forth in the Loan and Security Agreement. The Term Loan accrues interest at a floating rate of at least 8.95% per annum, comprised of three-month LIBOR rate with a floor of 1.00% plus 7.95%. Pursuant to the Loan and Security Agreement, we were previously required to make interest only payments through June 1, 2016 and thereafter we were required to make payments of principal and accrued interest in equal monthly installments sufficient to amortize the Term loan through June 1, 2019, the maturity date. On February 23, 2016, we received an acknowledgement and agreement from Oxford related to the positive data on our U.S. ACT-OA clinical trial. As a result, pursuant to the Loan and Security Agreement, the period for which we are required to make interest-only payments was extended from July 1, 2016 to January 1, 2017. All unpaid principal and interest with respect to the Term Loan is due and payable in full on June 1, 2019. At maturity of the Term Loan, or earlier repayment in full following voluntary prepayment or upon acceleration, we are required to make a final payment in an aggregate amount equal to approximately $1.1 million. In connection with the Term Loan, on May 29, 2015, we issued to Oxford warrants to purchase an aggregate of 94,441 shares of our common stock at an exercise price of $10.35 per share. These warrants became exercisable as of November 30, 2015 and will expire on May 29, 2025 and, following the authoritative accounting guidance, are equity classified.

In connection with the Loan and Security Agreement, we prepaid all outstanding amounts under our prior loan agreement with Oxford and Silicon Valley Bank, at which time the Company's obligations under the prior loan agreement immediately terminated. We paid approximately $25.4 million to Oxford and Silicon Valley Bank, consisting of the then outstanding principal balance due of approximately $23.4 million, accrued but unpaid interest of approximately $0.2 million, final payment and other agency fees of approximately $1.8 million and other customary lender fees and expenses.

For Oxford, we accounted for this Term Loan as a debt modification. We retired $3.1 million of the principal of the previous loan and the corresponding unamortized fees were expensed. The remaining fees of $0.8 million were recorded as debt discount, and along with the new loan fees, are amortized as an adjustment of interest expense using the effective interest method. For Silicon Valley Bank, which did not participate in the Term Loan, the payoff of the loan was accounted for as debt extinguishment. Accordingly, a total loss on debt extinguishment of $0.3 million was recorded in 2015, which includes the unamortized fees and discounts along with final payment fees.

We allocated the aggregate proceeds of the Term Loan between the warrants and the debt obligations based on their relative fair values. The fair value of the warrants issued to Oxford was calculated utilizing the Black-Scholes option pricing model. The Black-Scholes option-pricing model incorporates various and highly sensitive assumptions including expected volatility, expected term and risk-free interest rates. The expected volatility is based on the historical volatility of the Company's common

stock over the m ost recent period. The risk-free interest rate for period within the contractual life of the warrant is based on the U.S. Treasury yield in effect at the time of grant. We amortize the relative fair value of the warrants at the issuance date as a discount of $0.8 million over the term of the loan using the effective interest method, with an effective interest rate of 14.95%. The Term Loan is collateralized by a security interest in substantially all of the Company's existing and subsequently acquired assets , subject to certain exceptions set forth in the Loan and Security Agreement and excluding its intellectual property assets, which are subject to a negative pledge. The minimum liquidity covenant is $5 million. As of December 31, 2016 we were in compliance with the debt covenants.

Additional details relating to the outstanding Term Loan as of December 31, 2016 and 2015 are presented in the following table (in thousands):

Year ended December 31, 2016

Origination Date	Original Loan Amount	Interest Rate**	Current Monthly Payment*	Original Term	Remaining Principal (Face Value)
May 2015	$ 17,700	8.95%	$ 136	48 Months	$ 17,700

Year ended December 31, 2015

Origination Date	Original Loan Amount	Interest Rate**	Current Monthly Payment***	Original Term	Remaining Principal (Face Value)
May 2015	$ 17,700	8.95%	$ 136	48 Months	$ 17,700

** Monthly payment as of December 2016, which reflects interest only*
*** 3 month LIBOR rate with a floor of 1% plus 7.95%*

As of December 31, 2016, the future contractual principal and final fee payments on all of our debt and capital lease obligations are as follows (as thousands):

Years Ending December 31,	
2017	$ 7,080
2018	7,080
2019	4,629
Total	$ 18,789

Reconciliation of Face Value to Book Value as of December 31, 2016	
Total debt and lease obligations, including final payment fee (Face Value)	$ 18,789
Less: Debt discount	(1,152)
Total obligation	$ 17,637

Our interest expense for the years ended December 31, 2016 and 2015 was $2.6 million and $3.4 million, respectively. Interest expense is calculated using the effective interest method, therefore it is inclusive of non-cash amortization in the amount of $1.0 million and $1.0 million, respectively, related to the amortization of the debt discount related to the capitalized loan costs and accretion of final payment.

9. Income Taxes

Due to our net losses for the years ended December 31, 2016 and 2015, and since we have recorded a full valuation allowance against deferred tax assets, there was no provision or benefit for income taxes recorded. We recorded an immaterial amount pertaining to current foreign income tax provision expense for the year ended December 31, 2016 and no components of current or deferred federal or state income tax provisions for the years ended December 31, 2015.

A reconciliation of the total income tax provision tax rate to the statutory federal income tax rate of 34% for the years ended December 31, 2016 and 2015 is as follows:

	2016	2015
Income tax expense (benefit) at federal statutory rate	(34.00)%	(34.00)%
Income tax expense (benefit) at state statutory rate	(3.41)%	(4.40)%
Mark to market permanent adjustment	0.00%	(13.91)%
Change in valuation allowance	16.75%	(7.45)%
Change in state rate	(0.06)%	(0.09)%
Permanent interest adjustments	0.16%	6.25%
Stock compensation	12.67%	20.43%
Transfer pricing	0.00%	18.49%
Research credit	(1.44)%	(2.37)%
Foreign rate differential	0.79%	0.69%
NOLs expiring and adjustments to NOL	6.00%	13.92%
Other, net	2.54%	2.44%
	0.00%	0.00%

The tax effects of temporary differences that give rise to significant portions of our deferred tax assets and deferred tax liabilities as of December 31, 2016 and 2015 are as follows (in thousands):

	2016	2015
Deferred tax assets:		
Allowances and reserves	$ 573	$ 673
Accrued expenses	701	951
Deferred revenue and gain-on-sale	33	39
Stock based compensation	1,947	4,547
Net operating loss carryforwards	125,182	119,000
Income tax credit carryforwards	7,764	7,437
Property and equipment, principally due to differences in depreciation	675	683
Other, net	15	16
	136,890	133,346
Valuation allowance	(134,873)	(131,187)
Total deferred tax assets, net of allowance	2,017	2,159
Deferred tax liabilities:		
Intangibles assets	(2,017)	(2,159)
Total deferred tax liability	(2,017)	(2,159)
Net deferred tax assets (liability)	$ —	$ —

We have established a valuation allowance against our net deferred tax assets due to the uncertainty surrounding the realization of such assets. We periodically evaluate the recoverability of the deferred tax assets. At such time as it is determined that it is more likely than not that deferred assets are realizable, the valuation allowance will be reduced. We have recorded a full valuation allowance of $134.9 million as of December 31, 2016 as we do not believe it is more likely than not our net deferred tax assets will be realized. We increased our valuation allowance by approximately $3.7 million during the year ended December 31, 2016.

At December 31, 2016, we had federal, and state tax loss carry forwards of approximately $344.2 million, and $158.1 million. The federal and state net operating loss carry forwards begin to expire in 2019 and 2017, respectively, if unused. At December 31, 2016, we had federal and state tax credit carry forwards of approximately $4.9 million and $4.4 million, respectively, after reduction for uncertain tax positions. The Company has not performed a formal research and development credit study with respect to these credits. The federal credits will begin to expire in 2018, if unused, and the state credits carry forward indefinitely.

Pursuant to the Internal Revenue Code (“IRC”) of 1986, as amended, specifically IRC §382 and IRC §383, our ability to use net operating loss and R&D tax credit carry forwards (“tax attribute carry forwards”) to offset future taxable income is limited if we experience a cumulative change in ownership of more than 50% within a three-year testing period. We have not completed an ownership change analysis pursuant to IRC Section 382 for taxable years ended after December 31, 2007. If ownership changes

within the meaning of IRC Section 382 are identified as having occurred subsequent to 2007, the amount of remaining tax attribute carry forwards available to offset future taxable income and income tax expense in future years may be significantly r estricted or eliminated. Further, our deferred tax assets associated with such tax attributes could be significantly reduced upon realization of an ownership change within the meaning of IRC §382.

We recognize tax benefits associated with the exercise of stock options directly to stockholders' equity only when realized. Accordingly, deferred tax assets are not recognized for net operating loss carry forwards resulting from windfall tax benefits. At December 31, 2016, deferred tax assets do not include $1.3 million of excess tax benefits from stock-based compensation.

The Company follows the provisions of income tax guidance which provides recognition criteria and a related measurement model for uncertain tax positions taken or expected to be taken in income tax returns. The guidance requires that a position taken or expected to be taken in a tax return be recognized in the financial statements when it is more likely than not that the position would be sustained upon examination by tax authorities. Tax positions that meet the more likely than not threshold are then measured using a probability weighted approach recognizing the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company has not recognized any liability for uncertain tax positions as of December 31, 2016 and 2015.

Following is a tabular reconciliation of the unrecognized tax benefits activity during the years ended December 31, 2016 and 2015 (in thousands):

	2016	2015
Unrecognized Tax Benefits – Beginning	$ 1,987	$ 1,852
Gross increases – tax positions in prior period	1	—
Gross decreases – tax positions in prior period	(13)	—
Gross increase – current-period tax positions	87	135
Unrecognized Tax Benefits – Ending	$ 2,062	$ 1,987

The unrecognized tax benefit amounts are reflected in the determination of the Company's deferred tax assets. If recognized, none of these amounts would affect the Company's effective tax rate, since it would be offset by an equal reduction in the deferred tax asset valuation allowance. The Company does not foresee material changes to its liability for uncertain tax benefits within the next twelve months.

The Company's material tax jurisdictions are United States and California. The Company is currently not under examination by the Internal Revenue Service or any other taxing authority.

The Company's tax years for 1998 (federal) and 1997 (CA) and forward can be subject to examination by the United States and California tax authorities due to the carry forward of net operating losses and research development credits.

10. Employee Benefit Plan

We implemented a 401(k) retirement savings and profit sharing plan (the "Plan") effective January 1, 1999. We may make discretionary annual contributions to the Plan, which is allocated to the profit sharing accounts based on the number of years of employee service and compensation. At the sole discretion of the Board of Directors, we may also match the participants' contributions to the Plan. We made no discretionary or matching contributions to the Plan in 2016 or 2015.

11. Stockholders' Equity

Preferred Stock

We have authorized 5 million shares of $0.001 par value preferred stock. Our Board of Directors is authorized to designate the terms and conditions of any preferred stock we issue without further action by the common stockholders. There were 13,500 shares of Series A 3.6% Convertible Preferred Stock that had been issued at December 31, 2016 and 2015, none of which were outstanding as of either date.

All outstanding shares of the Series A 3.6% Convertible Preferred Stock were converted into common stock during the fourth quarter of 2014 and the first quarter of 2015 at the option of the holders. The fair value of the common stock into which the Series A 3.6% Convertible Preferred Stock was convertible on the date of issuance exceeded the proceeds allocated to the preferred stock, resulting in the beneficial conversion feature that we recognized as a dividend to the preferred stockholders and, accordingly, an adjustment to net loss to arrive at net loss allocable to common stockholders. Certain shares of Series A 3.6% Convertible Preferred Stock were not convertible until stockholder approval, which occurred in January 2015. As a result, a dividend for the beneficial conversion feature of $0.7 million was recorded during the quarter ended March 31, 2015.

In connection with the 3.6% Convertible Preferred Stock outstanding at December 31, 2014, we declared a cash dividend of $0.07 million. The cash dividend wa s paid in January and April 2015.

Common Stock

In May 2015, the Company entered into a Securities Purchase Agreement with certain institutional investors pursuant to which the Company agreed to sell up to $25.0 million of units, with each unit consisting of one share of its common stock and one warrant to purchase one share of its common stock, in a registered direct offering. The purchase and sale of the units took place in two separate closings. At the initial closing, which took place on May 8, 2015, the Company received approximately $17.4 million in net proceeds from the sale of units. The second closing occurred on August 27, 2015 upon satisfaction of certain conditions, including, without limitation, stockholder vote, and the Company received approximately $2.1 million in net proceeds from the sale of 500,000 units of the 1,000,000 units available for sale at the second closing.

On December 17, 2015, the Company and the holders of October 2014 warrants agreed to amend the October 2014 Warrants pursuant to an Amendment to Common Stock Purchase Warrant (the "2014 Amendment"). Also on December 17, 2015, the Company and the holders of the May 2015 Warrants and the August 2015 Warrants (collectively the "2015 Warrants") agreed to amend the 2015 Warrants pursuant to an Amendment to Series A-1 Warrant to Purchase Common Stock and Amendment to Series A-2 Warrant to Purchase Common Stock, respectively (the "2015 Amendment" and, together with the 2014 Amendment, the "Warrant Amendments"). The Warrant Amendments provided that the holders may exercise their warrants on a "cashless exercise" basis in whole on or prior to December 31, 2015, whereby each exercising holder of the amended 2015 Warrants would receive 0.75 shares for each warrant share exercised and each exercising holder of the amended 2014 Warrants would receive 0.69 shares for each warrant share exercised. In addition, the Warrant Amendments removed certain provisions which provided that the exercise price of the Warrants would be reset in the event of certain equity issuances by the Company for a price below the exercise price of the Warrants at the time of such issuance. All 2014 Warrants and all 2015 Warrants were cashless exercised on or before December 31, 2015.

During 2016, we sold 1,840,982 shares of our common stock under an at-the-market offering program ("ATM"), receiving total net proceeds of approximately $4.4 million. During 2015, we sold 5,800,000 shares of our common stock under the ATM program, receiving total net proceeds of approximately $7.2 million.

Pursuant to a registration statement on Form S-1, originally filed on April 6, 2016, as amended, and declared effective by the SEC on May 26, 2016, and related prospectus (as supplemented), the Company registered, offered and sold to its participating stockholders of record as of the announced May 20, 2016 record date, one non-transferable subscription right for each share of common stock held by each stockholder as of the record date. Each right entitled the holder thereof to purchase one unit at the subscription price of $2.55 per unit, composed of one share of common stock and 0.5 of a warrant, with each whole warrant exercisable to purchase one share of common stock at an exercise price of $3.06 per share for 30 months from the date of issuance. Pursuant to the Rights Offering, which closed on June 15, 2016, the Company sold an aggregate of 6,704,852 units, resulting in total net proceeds to the Company of $15.3 million, respectively. The warrants issued pursuant to the Rights Offering are currently listed on NASDAQ under the symbol "CTYXW." Based on the relevant authoritative accounting guidance, the warrants were equity classified at the issuance date. Upon notice to the warrant holders, the warrants may be redeemed by the Company at $0.01 per warrant prior to their expiration and exercise if the Company's common stock closes above $7.65 per share for 10 consecutive trading days.

On December 22, 2016, we entered into the Lincoln Park Purchase Agreement pursuant to which we have the right to sell to Lincoln Park and Lincoln Park is obligated to purchase up to $20.0 million in amounts of shares, of our common stock, over the 30-month period commencing on the date that a registration statement, which we filed with the SEC in December 2016. We may direct Lincoln Park, at its sole discretion and subject to certain conditions, to purchase up to 100,000 shares of common stock on any business day but in no event will the amount of a single Regular Purchase (as defined in the Lincoln Park Purchase Agreement) exceed $1.0 million. The purchase price of shares of common stock related to the Regular Purchases will be based on the prevailing market prices of such shares at the time of sales. Our sales of shares of common stock to Lincoln Park under the Lincoln Park Purchase Agreement are limited to no more than the number of shares that would result in the beneficial ownership by Lincoln Park and its affiliates, at any single point in time, of more than 9.99% of the then outstanding shares of the common stock. There are no trading volume requirements or restrictions under the Lincoln Park Purchase Agreement. There is no upper limit on the price per share that Lincoln Park must pay for common stock under a Regular Purchase or an accelerated purchase and in no event will shares be sold to Lincoln Park on a day our closing price is less than the floor price of $0.50 per share as set forth in the Purchase Agreement. On December 22, 2016, we issued to Lincoln Park 127,419 shares of common stock with a market value on the date of issuance of approximately $0.2 million as commitment shares in consideration for entering into the Lincoln Park Purchase Agreement. We will issue up to an additional 382,258 shares of common stock on a pro rata basis to Lincoln Park only as and when shares are sold under the Lincoln Park Purchase Agreement to Lincoln Park. To date, we have sold no shares under the Lincoln Park Purchase Agreement with Lincoln Park.

12. Stock-based Compensation

In August 2014, we adopted the 2014 Equity Incentive Plan (the "2014 Plan"), which provides our employees, directors and consultants the opportunity to purchase our common stock in the form of options (incentive or non-qualified), stock appreciation rights, restricted stock purchase rights, restricted stock bonuses, restricted stock units, performance shares, performance units, cash-based awards other stock-based awards, and deferred compensation awards. The 2014 Plan initially provides for issuance of 265,000 shares of our common stock. In May 2016, the Company amended the 2014 Plan to add 333,333 shares to its share pool. In August 2015, the Company amended the 2014 Plan to add 301,800 shares to its share pool. In addition, the amendment increased the number of "incentive stock options" which may be issued under the 2014 Plan by an identical amount.

On December 29, 2015, we adopted the 2015 New Employee Incentive Plan (the "2015 Plan"). Awards under the 2015 Plan may only be made to an employee who has not previously been an employee or member of the Board of any parent or subsidiary, or following a bona fide period of non-employment by the Company or a parent or subsidiary, if he or she is granted such award in connection with his or her commencement of employment with the Company or a subsidiary and such grant is an inducement material to his or her entering into employment with the Company or such subsidiary. The 2015 Plan provides for issuance of 66,666 shares.

As of December 31, 2016, there are 525,965 shares of common stock remaining and available for future issuances under the 2014 Plan, which is exclusive of securities to be issued upon an exercise of outstanding options, warrants, and rights.

Stock Options

Generally, options issued under the 2014 Plan, are subject to four-year vesting, and have a contractual term of 10 years. Most options contain one of the following two vesting provisions:

- 12/48 of a granted award will vest after one year of service, while an additional 1/48 of the award will vest at the end of each month thereafter for 36 months, or
- 1/48 of the award will vest at the end of each month over a four-year period.

A summary of activity for the year ended December 31, 2016 is as follows:

	Options	Weighted Average Exercise Price
Balance as of January 1, 2016	573,727	$ 44.85
Granted	347,407	$ 2.73
Expired	(23,979)	$ 104.11
Cancelled/forfeited	(261,043)	$ 32.07
Balance as of December 31, 2016	636,112	$ 24.39

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance as of December 31, 2016	636,112	$ 24.39	7.38	$ —
Vested and expected to vest at December 31, 2016	598,135	$ 25.72	7.27	$ —
Exercisable at December 31, 2016	286,358	$ 47.76	5.54	$ —

There were no stock options exercised in 2016 or 2015.

The fair value of each option awarded during the year ended December 31, 2016 and 2015 was estimated on the date of grant using the Black-Scholes-Merton option valuation model based on the following weighted-average assumptions:

	Years ended December 31,	
	2016	2015
Expected term	6.0 years	6.0 years
Risk-free interest rate	1.75%	1.58%
Volatility	77.56%	75.07%
Dividends	—	—
Resulting weighted average grant date fair value	$ 1.84	$ 4.50

The weighted average risk-free interest rate represents the interest rate for treasury constant maturity instruments published by the Federal Reserve Board. If the term of available treasury constant maturity instruments is not equal to the expected term of an employee option, we use the weighted average of the two Federal Reserve securities closest to the expected term of the employee option.

The dividend yield has been assumed to be zero as we (a) have never declared or paid any dividends and (b) do not currently anticipate paying any cash dividends on our outstanding shares of common stock in the foreseeable future.

Restricted Stock Awards

Generally, restricted stock awards issued under the 2014 Plan are subject to a vesting period that coincides with the fulfillment of service requirements for each award and have a contractual term of 10 years. These awards are amortized to compensation expense over the estimated vesting period based upon the fair value of our common stock on the award date.

A summary of activity for the year ended December 31, 2016 is as follows:

	Restricted Stock Awards	Weighted Average Grant Date Fair Value
Balance as of January 1, 2016	31,196	$ 12.15
Vested/Released	(11,568)	$ 15.18
Cancelled/forfeited	(19,113)	$ 10.03
Balance as of December 31, 2016	515	$ 64.52

The following summarizes the total compensation cost recognized for the stock options and restricted stock awards in the accompanying financial statements (in thousands):

	Years ended December 31,	
	2016	2015
Total compensation cost for share-based payment arrangements recognized in the statement of operations (net of tax of $0)	$ 1,080	$ 2,041

As of December 31, 2016, the total compensation cost related to non-vested stock options and stock awards not yet recognized for all our plans is approximately $1.0 million, which is expected to be recognized as a result of vesting under service conditions over a weighted average period of 1.58 years.

To settle stock options and restricted stock awards, we will issue new shares of our common stock. At December 31, 2016, we have an aggregate of 49,708,768 shares authorized and available to satisfy option exercises under our plans.

13. Quarterly Information (unaudited)

The following unaudited quarterly financial information includes, in management's opinion, all the normal and recurring adjustments necessary to fairly state the results of operations and related information for the periods presented (in thousands):

	For the three months ended			
	March 31, 2016	June 30, 2016	September 30, 2016	December 31, 2016
Product revenues	$ 1,333	$ 1,126	$ 731	$ 1,466
Gross profit	766	541	113	521
Development revenues	1,585	1,699	1,879	1,561
Operating expenses	(7,448)	(8,464)	(6,789)	(5,670)
Other expense, net	(242)	(181)	(587)	(1,330)
Net income (loss)	$ (5,339)	$ (6,405)	$ (5,384)	$ (4,918)
Beneficial conversion feature for convertible preferred stock	—	—	—	—
Net income (loss) allocable to common stock holders	(5,339)	(6,405)	(5,384)	(4,918)
Basic and diluted net loss per share	$ (0.41)	$ (0.43)	$ (0.26)	$ (0.24)

	For the three months ended			
	March 31, 2015	June 30, 2015	September 30, 2015	December 31, 2015
Product revenues	$ 902	$ 1,614	$ 766	$ 1,556
Gross profit	305	318	264	765
Development revenues	1,444	1,847	1,710	1,820
Operating expenses	(22,745)	3,626	16	(4,656)
Other expense, net	(961)	(1,342)	(470)	(685)
Net income (loss)	$ (21,957)	$ 4,449	$ 1,520	$ (2,756)
Beneficial conversion feature for convertible preferred stock	(661)	—	—	—
Net income (loss) allocable to common stock holders	(22,618)	4,449	1,520	(2,756)
Basic and diluted net loss per share	$ (3.19)	$ 0.45	$ 0.15	$ (0.25)

14. Subsequent Events

Azaya Therapeutics, Inc. Assets

On February 15, 2017 (the "Closing Date"), Cytori completed the acquisition from Azaya Therapeutics, Inc. ("Azaya") of substantially all of the assets and the assumption of certain of liabilities, pursuant to an Asset Purchase Agreement. Pursuant to the Acquisition, Cytori has acquired the rights, title and interest in and to (i) Azaya's ATI-0918 drug candidate, a generic bioequivalent formulation of DOXIL/CAELYX, a chemotherapy drug that is a liposomal encapsulation of doxorubicin (ATI-0918); (ii) Azaya's ATI-1123 drug candidate, a liposomal formulation of docetaxel (ATI-1123); and (iii) certain equipment, inventory and other assets necessary to develop, manufacture, test and validate ATI-0918 and ATI-1123.

Under the terms of the Purchase Agreement, at the closing of the Acquisition, the Company (i) issued 1,173,241 of shares of its common stock, par value, $0.001 per share , in Azaya's name, (A) 879,931 of which will be delivered to Azaya promptly after the Closing, and (B) 293,310 of which will be deposited into a 15-month escrow pursuant to a standard escrow agreement; and (ii) assumed the obligation to pay approximately $2.0 million of Azaya's existing trade payables, which payments the Company intends to make at or within thirty days after the Closing. The price per share was $1.7047, which price was equal to the volume weighted average closing price of the shares on the Nasdaq Capital Market over the ten consecutive trading days ending on the trading date immediately prior to the date of the Closing Date.

In addition, as of the Closing Date, the Company assumed obligations to: (i) pay Azaya fixed commercialization milestone payments based upon achievement of certain net sales milestones for ATI-0918; (ii) make certain earn-out payments to Azaya equal to a mid-single-digit percentage of net sales of ATI-0918; and (iii) make certain earn-out payments to Azaya equal to a low single-digit percentage of net sales of any product (each a "Patented Product"), including ATI-1123, that practices a claim in the related patent assigned by Azaya to the Company (the "ATI-1123 Patent"). Cytori's aggregate earn-out payment obligations to Azaya from global net sales of both ATI-0918 and any Patented Product will not exceed $100.0 million (the "Earn-Out Cap").

Further, the Purchase Agreement provides that if Cytori enters into certain assignments, licenses or other transfers of rights to a Patented Product or the ATI-1123 Patent, the Company will pay Azaya a percentage in the low to mid-teens of the consideration received by the Company, provided, that Cytori's aggregate payment obligation to Azaya for any such assignment, license or other transfer of rights will not exceed $50.0 million.

If the Company or its successors, sublicenses or transferees sells a competing product to ATI-0918 at any time prior to satisfaction of the Earn-Out Cap, other than because ATI-0918 fails to receive marketing authorization from the European Medicines Agency within a certain period of time or fails to generate a minimum threshold of net sales within a pre-determined amount of time, then 50% of the net sales of such competing product would be deemed to be net sales of ATI-0918 under the Purchase Agreement for purposes of calculating commercialization milestone payments and earn-out payments.

Both the Company and Azaya agreed to customary representations, warranties and covenants in the Purchase Agreement. Each party also agreed to customary indemnification obligations, provided, that Azaya's maximum liability to the Company for breaches of Azaya's representations and warranties in the Purchase Agreement and any ancillary agreements entered into in connection therewith, is limited to $3.9 million, subject to limited exceptions.

Lease Agreement

On February 27, 2017, Cytori entered into a Lease Agreement (the "Lease") with 6262 Lusk Investors LLC, a California limited liability company ("Landlord"), for approximately 29,499 square feet of office space for the Company's corporate headquarters in San Diego, California. The initial term of the Lease is 63 months, and may be extended upon mutual agreement of the Company and the Landlord. The Lease is scheduled to commence on November 1, 2017 date, unless the premises are earlier occupied by the Company or the commencement date is delayed to allow for substantial completion of tenant improvements.

Under the Lease, the Company will be obligated to pay base rent as follows (in thousands):

- Year 1: $761;
- Year 2: $784;
- Year 3: $807;
- Year 4: $832;
- Year 5: $857;
- Months 61-63: $74 per month ($882 annualized base rent).

In addition to the base rent, the Company will also be obligated under the Lease to make certain payments for operating expenses, property taxes, insurance, insurance deductibles and other amounts.

In connection with the Lease, the Company issued a letter of credit, or Letter of Credit, in favor of the Landlord in the initial principal amount of $0.1 million, which Letter of Credit will increase to $0.3 million on June 1, 2017, and to $0.5 million on the commencement date. The Letter of Credit will remain in effect for the term of the Lease.

The Company has agreed to customary indemnifications of the Landlord and its affiliates arising out of the Company's use of the rented premises, breaches of the Company's obligations under the Lease and similar matters (except to the extent arising out of the Landlord's gross negligence or willful misconduct).

Item 9. Changes in and Disagreements with Acco untants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

(a) 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 Annual Report on Form 10-K. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this Annual Report were effective.

(b) Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) under the Securities Exchange Act of 1934 as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our Board of Directors, management and other personnel, 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 and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and our Board of Directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have conducted an evaluation of the effectiveness of our internal control over financial reporting as of the end of the fiscal year covered by this annual report on Form 10-K based on the criteria set forth in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2016 based on the COSO criteria.

This report does not include an attestation report on internal control over financial reporting by the Company's independent registered public accounting firm since the Company is a smaller reporting company under the rules of the SEC.

(c) Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The following table sets forth biographical information regarding our directors as of February 28, 2017

DIRECTORS AND BUSINESS EXPERIENCE

Name	Age	Position
David M. Rickey	61	Chairman of the Board
Marc H. Hedrick, MD	54	President and Chief Executive Officer and Director
Richard J. Hawkins	68	Director
Paul W. Hawran	64	Director
Gary A. Lyons	65	Director
Ronald A. Martell	55	Director
Gail K. Naughton, Ph.D.	61	Director

David M. Rickey has served on our Board since November 1999 and has served as the Chairman of our Board since June 2013. Mr. Rickey was previously President and Chief Executive Officer of Applied Micro Circuits Corporation, or AMCC, a publicly-held company that provides high-performance, high-bandwidth silicon solutions for optical networks, from February 1996 to March 2005. Mr. Rickey served on the Board of AMCC from February 1996 to March 2005, and as its Chairman from August 2000 to March 2005. Mr. Rickey also served as a director of AMI Semiconductor, Inc. from 2000 to 2006 and was a director of Netlist, Inc. from 2005 to 2008, as well as several private technology companies. He holds a B.S. from Marietta College, a B.S. from Columbia University and an M.S. from Stanford University. Mr. Rickey's qualifications to sit on our Board include his extensive executive experience and his service on other public company boards and committees.

Marc H. Hedrick, M.D. was appointed as Chief Executive Officer of the Company in April 2014. He was appointed as President of the Company in May 2004, and joined us as Chief Scientific Officer and Medical Director in October 2002. Dr. Hedrick has also served as a member of our Board since October 2002. In December 2000, Dr. Hedrick co-founded and served as President and Chief Executive Officer and Director of StemSource, Inc., a privately-held company specializing in stem cell research and development, which was acquired by us in 2002. He is a plastic surgeon and is a former Associate Professor of Surgery and Pediatrics at the University of California, Los Angeles, or UCLA. From 1998 until 2005, he directed the Laboratory of Regenerative Bioengineering and Repair for the Department of Surgery at UCLA. Dr. Hedrick earned his M.D. degree from University of Texas Southwestern Medical School, Dallas and an M.B.A. from UCLA Anderson School of Management. Dr. Hedrick's qualifications to sit on our Board include his experience as a general, vascular and plastic surgeon; his academic appointments and achievements in the life sciences; his executive and managerial experience in stem cell research and scientific product development; and his foundational knowledge and experience of and contributions to our technology and operations. In addition, Dr. Hedrick has extensive global experience and familiarity with the cell therapy and regenerative medical industry.

Richard J. Hawkins has served on our Board since December 2007. In 1982, Mr. Hawkins founded Pharmaco, a clinical research organization, or CRO, that merged with the predecessor of PPD-Pharmaco in 1991 and is one of the largest CROs in the world today. In 1992, Mr. Hawkins co-founded Sensus Drug Development Corporation, or SDDC, a privately-held company focused on the treatment of drugs to treat endocrine disorders, which developed and received regulatory approval for SOMAVERT®, a growth hormone antagonist approved for the treatment of acromegaly, which is now marketed by Pfizer, Inc., and he served as Chairman of SDDC until 2000. In 1994, Mr. Hawkins co-founded Corning Biopro, a contract protein manufacturing firm, where he served on the Board until Corning BioPro's sale to Akzo-Nobel, N.V., a publicly-held producer of paints, coatings and specialty chemicals, in 2000. In September 2003 Mr. Hawkins founded LabNow, Inc., a privately held company that develops lab-on-a-chip sensor technology, where he served as the Chairman and CEO until October 2009. Mr. Hawkins has served on the Board of SciClone Pharmaceuticals, Inc., a publicly-held specialty pharmaceutical company, since October 2004. In February 2011, Mr. Hawkins became CEO, and is currently CEO, of Lumos Pharma, Inc., a privately-held pharmaceutical company. He served on the Presidential Advisory Committee for the Center for Nano and Molecular Science and Technology at the University of Texas in Austin, and was inducted into the Hall of Honor for the College of Natural Sciences at the University of Texas. Mr. Hawkins graduated cum laude with a B.S. in Biology from Ohio University. Mr. Hawkins's qualifications to sit on our Board include his executive experience working with life sciences companies, his extensive experience in pharmaceutical research and development, his knowledge, understanding and experience in the regulatory development and approval process and his service on other public company boards and committees.

Paul W. Hawran has served on our Board since February 2005. Mr. Hawran has held various executive, strategic, financial and operational positions in the health care industry for over 30 years. Mr. Hawran was a founder and President and CEO of Ascendant MDx, a molecular diagnostic testing company focused on women's health ca re, through June 2013. Prior to Ascendant MDx, Mr. Hawran was the Chief Financial Officer of Sequenom, Inc., a publicly traded genetics company, from April 2007 to September 2009, served on their Board from August 2006 to February 2007 and was the Chairma n of the Audit Committee of the Board. Mr. Hawran also served as a Founder, Executive Vice President and Chief Financial Officer of Neurocrine Biosciences, or Neurocrine, a publicly traded company engaged in pharmaceutical drug development, from May 1993 through September 2006, and as a Senior Advisor to Neurocrine from September 2006 through April 2007. Mr. Hawran was employed by SmithKline Beecham (now Glaxo SmithKline) from July 1984 to May 1993, most recently as Vice President and Treasurer. Prior to joining SmithKline Beecham in 1984, he held various financial positions at Warner Communications (now Time Warner) involving corporate finance and financial planning and forecasting. Mr. Hawran earned a B.S. in Finance from St. John's University and an M.S . in Taxation from Seton Hall University. He is a Certified Public Accountant (currently inactive) and is a member of the American Institute of Certified Public Accountants. Mr. Hawran's qualifications to sit on our Board include his executive experience in life sciences industries, his extensive experience in strategic and corporate finance and planning, his status as an audit committee financial expert within the meaning of Item 407(d)(5) of SEC Regulation S-K and his service on other public company boar ds and committees

Gary A. Lyons has served on our Board since October 2013. Mr. Lyons has served on the Board of Neurocrine Biosciences, Inc., or Neurocrine, since 1993 and served as the President and Chief Executive Officer of Neurocrine from 1993 through January 2008. Prior to joining Neurocrine, Mr. Lyons held a number of senior management positions at Genentech, Inc., including Vice President of Business Development and Vice President of Sales. Mr. Lyons has served on the Boards of Rigel Pharmaceuticals, Inc., a publicly-held biotechnology company, since October 2005 (and as Chairman since November 2014); Vical Incorporated, a publicly-held biopharmaceutical company, since 1997; and Retrophin, Inc., a publicly-held biopharmaceutical company, since 2014 (and as Chairman since May 2016). Mr. Lyons was previously a director of PDL BioPharma, Inc., Poniard Pharmaceuticals, Inc., Neurogesx, KaloBios Pharmaceuticals, Inc. and Facet Biotech Corporation. Mr. Lyons holds a B.S. in Marine Biology from the University of New Hampshire and an M.B.A. from Northwestern University's J.L. Kellogg Graduate School of Management. Mr. Lyons' qualifications to sit on our Board include his executive experience working with life sciences companies, his extensive experience in pharmaceutical business development, his knowledge, understanding and experience in the regulatory development and approval process and his service on other public company boards and committees.

Ronald A. Martell has served on our Board since December 2016. Mr. Martell has more than 25 years' experience building and managing unique businesses in the biotech industry. Mr. Martell is currently a founder of Achieve Life Sciences, ORCA BioSystems, Inc. and Cetya Therapeutics, Inc. Most recently he served as Chief Executive Officer of Sevion Therapeutics and Executive Chairman of KaloBios Pharmaceuticals, Inc. Prior to Sevion, Mr. Martell was President and CEO of NeurogesX and sold the company's assets to Acorda Therapeutics. Prior to NeurogesX he was Chief Executive Officer of Poniard Pharmaceuticals. Before joining Poniard he served in the capacity of the Office of the CEO and as Senior Vice President of Commercial Operations at ImClone Systems. Mr. Martell built ImClone Systems' Commercial Operations and field sales force to market and commercialize Erbitux® with partners Bristol-Myers Squibb and Merck KGaA. Prior to joining ImClone Systems, Mr. Martell worked for 10 years at Genentech, Inc., or Genentech, in a variety of positions, the last of which was Group Manager, Oncology Products. At Genentech, he was responsible for the launch of Herceptin® for metastatic HER-2 positive breast cancer and Rituxan® for non-Hodgkin's lymphoma. Mr. Martell began his career at Roche Pharmaceuticals. Mr. Martell's qualifications to sit on our Board include his executive experience working for life sciences companies, his extensive experience in pharmaceutical business development, his knowledge, understanding of and experience in developing and commercializing pharmaceutical products, and his service on other public company boards and committees.

Gail K. Naughton, Ph.D., has served on our Board since July 2014. Dr. Naughton is the founder of Histogen, Inc., or Histogen, a private regenerative medicine company developing innovative therapies based upon the products of cells grown under simulated embryonic conditions. She has served as Histogen's Chief Executive Officer and Chairman of the Board since the company's inception in 2007. Prior to that, Dr. Naughton held key management positions, including President, Chief Operating Officer and Director, at Advanced Tissue Sciences, a company which she co-founded and was co-inventor of the core technology. Dr. Naughton has also served on the Board of C.R. Bard, Inc. since July 2004. Dr. Naughton holds a B.S. in Biology from St. Francis College as well as a Master's in Histology and a Ph.D. from New York University Medical Center. She also holds an EMBA from the Anderson School of Business at the University of California, Los Angeles. Dr. Naughton's qualifications to sit on our Board include her extensive executive experience, her in-depth knowledge of the healthcare industry and regenerative medicine technology, and her service on other public company boards and committees.

EX ECUTIVE OFFICERS AND BUSINESS EXPERIENCE

The following table sets forth biographical information regarding our executive officers as of February 28, 2017.

Name	Age	Position(s)
Marc H. Hedrick, M.D. (1)	54	President, Chief Executive Officer and Director
Tiago Girão	37	Vice President, Finance & Chief Financial Officer
John Harris	48	Vice President and General Manager of Cell Therapy
Mark Marino, M.D.	57	Senior Vice President and Chief Medical Officer
Jeremy Hayden	47	General Counsel, Chief Compliance Officer, Secretary and Vice President of Business Development

(1) See "Directors and Business Experience" above for biographical information regarding Dr. Hedrick.

Tiago Girão joined us as Vice President of Finance and Chief Financial Officer in September 2014. Mr. Girão joined us from NuVasive, Inc., or NuVasive, a publicly-held medical device company, where he last served as International Controller from February 2014 to August 2014. Prior to his position as International Controller, he served as NuVasive's Director of Financial Reporting from March 2012 to February 2014. In his position as Director of Financial Reporting, Mr. Girao managed a team responsible for all corporate technical accounting and SEC-related matters for Nuvasive. Prior to joining NuVasive, Mr. Girão served as Senior Manager, Assurance at KPMG, LLP from October 2004 to March 2012. Prior to joining KPMG, Mr. Girão was a senior accountant for Ernst &Young in Brazil from October 2000 to August 2004. Mr. Girão is a certified public accountant with over 15 years' experience in the accounting, finance and reporting for U.S. and public companies and substantial experience in global finance and operations.

John D. Harris has served as our Vice President and General Manager of Cell Therapy since he joined us in October 2015. Mr. Harris has over 20 years' experience in medical device and biotechnology, most recently serving as the Vice President and General Manager of Becton Dickinson's operations in Japan. Prior to Becton Dickinson, Mr. Harris held business development, product development, and marketing and sales leadership roles with Tyco Electronics (now TE Connectivity Corp.), Delphi Automotive, Sorenson Medical, Kimberly-Clark Healthcare and Ballard Medical Products. Mr. Harris is a member of the Board of Governors of the American Chamber of Commerce in Japan (ACCJ) and a member of the Executive Committee of the American Medical Device & Diagnostics Association, where he chairs the Regenerative Medicine Working Group. Mr. Harris holds Master of Business Administration and Bachelor of Arts degrees from the University of Utah.

Mark Marino, M.D. joined us as Senior Vice President of Medical Affairs in May 2016, and was also appointed as Chief Medical Officer of the Company in August 2016. Before joining us, Dr. Marino served as Senior Vice President of Early Clinical Development for Turing Pharmaceuticals from November 2015 to May 2016. Prior to Turing, Dr. Marino served as Executive Director of Clinical Development at Daiichi-Sankyo from September 2012 to February 2013, and then as Vice President of Clinical Development at Daiichi-Sankyo from February 2013 to November 2015. Prior to Daiichi-Sankyo, Dr. Marino held various senior clinical positions at Archimedes Pharma, Inc., MannKind Corporation and Hoffman-LaRoche from August 2006 to September 2012. Dr. Mario also previously served as Chief of the Department of Pharmacology at the Walter Reed Army Institute of Research as well as Associate Professor of Medicine at the Uniformed Services University of the Health Sciences and a staff physician at the Walter Reed Army Medical Center. Dr. Marino received his medical degree from the Albert Einstein School of Medicine and his specialty training in internal medicine at the Eisenhower Army Medical Center and sub-specialty training in Clinical Pharmacology at the Uniformed Services University of the Health Sciences.

Jeremy B. Hayden joined us as General Counsel and Vice President of Business Development in July 2015. Prior to joining us, Mr. Hayden served as Assistant General Counsel at Volcano Corporation, a publicly-held medical device company that was acquired by Koninklijke Philips N.V in early 2015. Prior to Volcano Corporation, Mr. Hayden practiced corporate and securities law at several national and international law firms, including Mintz Levin Cohn Ferris Glovsky & Popeo, P.C. and McKenna Long & Aldridge, LLP (now Dentons). Mr. Hayden received his A.B. in Politics from Princeton University and his J. D. from the University of Michigan Law School.

CORPORATE GOVERNANCE

During 2016:

- the Board held eleven meetings and took action via unanimous written consent six times;
- the Audit Committee met eight times and took action via unanimous written consent one time;
- the Compensation Committee met two times and took action via unanimous written consent one times;
- the Governance and Nominating Committee met three times and did not take any actions via unanimous written consent;
- the Executive Committee met one time did not take action via unanimous written consent; and
- the sub-committee of the Executive Committee, comprised of our Chairman and our CEO, took action via unanimous written consent two times.

Each member of the Board attended seventy-five percent (75%) or more of the aggregate of (i) the total number of Board meetings held during the period of such member's service and (ii) the total number of meetings of committees of the Board on which such member served, during the period of such member's service, other than Richard Hawkins, who attendance rate was slightly under 75% due to the fact that we were required to reschedule certain calendared Board and Committee meetings to dates and times that precluded Mr. Hawkins' attendance.

All Board members are encouraged to attend our annual meetings of stockholders in person. However, in 2016, our stockholder meeting date did not coincide with our regularly scheduled quarterly Board meeting. Mr. Rickey, our Chairman, and Dr. Hedrick attended our 2016 Annual Meeting of Stockholders.

Board Independence

The Board has determined that Dr. Naughton and Messrs. Hawkins, Hawran, Lyons, Martell and Rickey are "independent" under the rules of the NASDAQ Stock Market. Under applicable SEC and the NASDAQ rules, the existence of certain "related person" transactions above certain thresholds between a director and the Company are required to be disclosed and preclude a finding by the Board that the director is independent. The Board is not able to consider Dr. Hedrick, our President and Chief Executive Officer, independent, as a result of his employment with us during his tenure as one of our directors.

Board of Directors Leadership Structure

Our bylaws and governance principles provide the Board with the flexibility to combine or separate the positions of Chairman and Chief Executive Officer. Historically, these positions have been separate. Our Board believes that the separation of these positions strengthens the independence of our Board and allows us to have a Chairman focused on the leadership of the Board while allowing our Chief Executive Officer to focus more of his time and energy on managing our operations. The Board currently believes this structure works well to meet the leadership needs of the Board and of the Company. Dr. Hedrick, our President and Chief Executive Officer, has comprehensive industry expertise and is able to devote substantial time to the Company, and Mr. Rickey, our Chairman, is able to devote focus on longer term and strategic matters, and to provide related leadership to the Board. As a result, we do not currently intend to combine these positions; however a change in this leadership structure could be made if the Board determined it was in the best long-term interests of stockholder based upon a departure of either our Chief Executive Officer or Chairman. For example, if the two roles were to be combined, we believe that the independence of the majority of our directors, and the three fully independent Board committees, would provide effective oversight of our management and the Company.

The Board's Role in Risk Oversight

The Board's role in risk oversight includes assessing and monitoring risks and risk management. The Board reviews and oversees strategic, financial and operating plans and holds management responsible for identifying and moderating risk in accordance with those plans. The Board fulfills its risk oversight function by reviewing and assessing reports from members of management on a regular basis regarding material risks faced by us Company and applicable mitigation strategy and activity. The reports cover the critical areas of operations, sales and marketing, development, regulatory and quality affairs, intellectual property, clinical development, legal and financial affairs. The Board and its Committees (described below) consider these reports; discuss matters with management and identify and evaluate any potential strategic or operational risks, and appropriate activity to address those risks.

Board Committees

The Board has standing Audit, Compensation, Executive, and Governance and Nominating Committees. All members of the Compensation Committee, Audit Committee, and Governance and Nominating Committee are independent directors.

Compensation Committee

The Compensation Committee currently consists of Mr. Lyons (Chairman), Dr. Naughton and Mr. Rickey. In May 2016, Tommy Thompson, a former director, stepped down as the Chairman (and a member) of our Compensation Committee. Mr. Lyons replaced Mr. Thompson as Chairman of the Compensation Committee, and Mr. Rickey joined the Compensation Committee to fill the vacancy created by Mr. Thompson's departure. Each of the members of our Compensation Committee is independent as defined by NASDAQ, a "Non-Employee Director" as defined by rule 16b-3(b)(3)(i) of the Securities Exchange Act of 1934, as amended, and an "outside director" as defined by Section 162(m) of the Internal Revenue Code of 1986, as amended. The Committee Chairman is responsible for setting the Committee's calendar and meeting agenda.

The Compensation Committee is responsible for developing and implementing compensation programs for our executive officers and other employees, subject only to the discretion of the full Board. More specifically, our Compensation Committee establishes base salary rates for each of the Company's officers, and administers our 2004 Equity Incentive Plan, our 2014 Equity Incentive Plan, our Executive Management Incentive Compensation Plan, our 2011 Employee Stock Purchase Plan and our 2015 New Employee Incentive Plan. The Compensation Committee establishes the compensation and benefits for our Chief Executive Officer and other executive officers, and also reviews the relationship between our performance and our compensation policies as well as assessing any risks associated with our compensation policies. In addition, the Compensation Committee reviews, and advises the Board on director compensation matters and on, regional and industry-wide compensation practices and trends in order to assess the adequacy of our executive compensation programs. The charter of the Compensation Committee has been established and approved by the Board, and a copy of the charter has been posted on our website at www.cytori.com under Investor Relations – Corporate Governance.

Our CEO attends some of the meetings of the Compensation Committee upon invitation, but does not participate in the executive sessions of the Compensation Committee.

Audit Committee

Our Audit Committee currently consists of Mr. Hawran (Chairman), Mr. Hawkins and Mr. Lyons. At the outset of 2016, Mr. Hawran (Chairman), Mr. Thompson and Mr. Hawkins were the members of our Audit Committee. Upon Mr. Thompson's departure in May 2016, Mr. Lyons joined the Audit Committee. The Audit Committee is comprised solely of independent directors, as defined by NASDAQ. The Board has determined that Mr. Hawran is an "audit committee financial expert" within the meaning of Item 407(d)(5) of SEC Regulation S-K. The charter of the Audit Committee has been established and approved by the Board, and a copy of the charter has been posted on our website at www.cytori.com under Investor Relations – Corporate Governance.

The Audit Committee selects our auditors, reviews the scope of the annual audit, approves the audit fees and non-audit fees to be paid to our auditors, and reviews our financial accounting controls with the staff and the auditors. The Audit Committee is also charged with review and oversight of management's enterprise risk management assessment.

Governance and Nominating Committee

Our Governance and Nominating Committee currently consists of Mr. Hawkins (Chairman), Mr. Martell and Dr. Naughton. Mr. Martell replaced Mr. Lyons as a member of Governance and Nominating Committee in December 2016. The Governance and Nominating Committee is comprised solely of independent directors, as defined by NASDAQ. The Governance and Nominating Committee interviews, evaluates, nominates and recommends individuals for membership on the Board, evaluates the effectiveness of the Board and its serving members, and recommends the structure, responsibility and composition of the committees of the Board. The Committee is also responsible for recommending guidelines and policies for corporate governance for adoption by the Board. The charter of the Governance and Nominating Committee has been established and approved by the Board, and a copy of the charter has been posted on our website at www.cytori.com under Investor Relations – Corporate Governance.

Executive Committee

The Executive Committee is comprised of our Chief Executive Officer, Chairman of the Board, and Chairpersons of each committee of the Board. The Executive Committee currently consists of Dr. Hedrick, Mr. Rickey, Mr. Hawkins, Mr. Hawran, and Mr. Lyons.

The Executive Committee's responsibilities, when such responsibilities are not discharged by our full Board, include to evaluate and approve the material te rms of any financing transactions or business transactions as well as to authorize and approve accompanying the issuance of stock and/or other equity securities. The Executive Committee also would be able to act on behalf of the full Board in urgent or exi gent circumstances wherein it would be very difficult or impossible to assemble the full Board between regularly scheduled meetings. In 2016, our Executive Committee acted as a special pricing committee of the Board with respect to our rights offering fin ancing, consummated in June 2016. The Sub-Committee of the Executive Committee, consists of our Chairman of the Board and our Chief Executive Officer, has the authority to approve corporate expenditures presented by our management in excess of $250,000 up to a maximum of $1,000,000 for a single corporate transaction.

CODE OF BUSINESS CONDUCT AND ETHICS

We have adopted a Code of Business Conduct and Ethics that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer and principal accounting officer. This Code of Business Conduct and Ethics has been posted on our website at www.cytori.com. We intend to post amendments to this code, or any waivers of its requirements, on our website at www.cytori.com under Investor Relations – Corporate Governance, as permitted under SEC rules and regulations.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires our directors, executive officers, and persons or entities who own more than ten percent of our common stock, to file with the SEC reports of beneficial ownership and changes in beneficial ownership of our common stock. Those directors, officers, and stockholders are required by regulations to furnish us with copies of all forms they file under Section 16(a). Based solely upon a review of the copies of such reports furnished to us and written representations from such directors, officers, and stockholders, we believe that all such reports required to be filed during 2016 were filed on a timely basis.

Item 11. Executive Compensation

Our named executive officers for fiscal year 2016 are:

- Marc H. Hedrick, M.D., our President and Chief Executive Officer;
- Tiago Girao, our Chief Financial Officer; and
- John Harris, our Vice President and General Manager of Cell Therapy.

These individuals are collectively referred to in this discussion as the "named executive officers," or "NEOs." Investors are encouraged to read this discussion in conjunction with the compensation tables and related notes, which include more detailed information about the compensation of our NEOs for 2016 and 2015.

2016 Summary Compensation Table

The following table sets forth information concerning compensation earned during 2015 and 2016 for services rendered to us by our NEOs.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
Name and Principal Position	Year	Salary	Stock Awards (1)	Option Awards (2)	Non-Equity Incentive Plan Comp. (3)	All Other Comp-ensation (4)	Total
Marc H. Hedrick, M.D.,	2016	$ 450,000	—	$ 156,273	$ 146,250	—	$ 752,523
President and Chief Executive Officer	2015	$ 450,000	$ 80,172	$ 115,200	$ 200,475	—	$ 845,847
Tiago M. Girao,	2016	$ 265,000	—	$ 65,535	$ 79,560	—	$ 410,095
VP of Finance, Chief Financial Officer and Chief Accounting Officer	2015	$ 265,000	$ 40,086	$ 57,600	$ 69,563	—	$ 432,249
John Harris,	2016	$ 361,830(5)	—	$ 65,535	$ 64,365	$125,249(6)	$ 616,979
VP and General Manager of Cell Therapy	2015	$ 88,167(5)	—	$ 123,982	$ 25,988	$ 19,647(6)	$ 257,784

(1) This column represents the dollar amount of the aggregate grant date fair value of stock awards granted in 2015, computed in accordance with FASB ASC Topic 718. For information relating to the assumptions made by us in valuing the stock awards made to our NEOs in 2016, refer to Note 12 to our audited consolidated financial statements included in this Form 10-K. These amounts do not reflect the actual economic value that will be realized by our NEOs upon vesting of the stock awards or sale of the common stock underlying the stock. On May 26, 2015, the Compensation Committee granted performance-based RSUs and the grant date fair value in the table was calculated based on the probable achievement of the performance objectives applicable to such awards, which was estimated at "target" performance for this purpose. Had maximum achievement of the performance criteria been achieved, the full grant date fair value of the awards, assuming maximum achievement of the performance criteria, would have been 200% of the amount set forth in the table.

(2) This column represents the dollar amount of the aggregate grant date fair value of option awards, computed in accordance with FASB ASC Topic 718. For information relating to the assumptions made by us in valuing the option awards made to our NEOs in 2016 and 2015, refer to Note 12 to our audited consolidated financial statements included in this Form 10-K. These amounts do not reflect the actual economic value that will be realized by our NEOs upon vesting of the stock options, exercise of the stock options, or sale of the common stock underlying the stock options.

(3) The amounts in column (f) reflect the cash awards under our EMIC Plan, which is discussed in further detail below under the heading in the subsection entitled " *Executive Management Incentive Compensation Plan* " of the "Narrative Disclosure to Compensation Tables" below.

(4) Dollar value of the perquisites and other personal benefits for Dr. Hedrick and Mr. Girao were less than $10,000 for the year reported.

(5) We paid Mr. Harris in Japanese Yen. During 2015, and 2016 his salary was reported at the average exchange rate over the year, or 0.0083 and 0.0086 Japanese Yen to US dollar in 2015 and 2016, respectively.

(6) Per the terms of his employment offer letter with us, Mr. Harris was eligible to receive a housing allowance while on assignment in Japan up to a maximum of 13,900,000 Japanese Yen per year, including direct payment by us of Mr. Harris' local rent (not to exceed 1,100,000 Japanese Yen per month) and additional healthcare coverage. We paid these benefits in Japanese Yen, and we recorded them in 2015 and 2016 at the average exchange rate over the applicable year, or 0.0083 and 0.0086 Japanese Yen to U.S. dollar in 2015 and 2016, respectively. During 2015 and 2016, Mr. Harris' rent expense was $18,260 and $111,994, respectively, and cost of his additional health care coverage was $1,387 and $13,255, respectively.

Narrative Disclosures to Summary Compensation Table

Executive Compensation

In the process of determining compensation for our NEOs, the Compensation Committee considers the current financial position of the Company, the strategic goals of the Company and the performance of each of our NEOs. The Committee also benchmarks the various components (described below) of our compensation program for executives to compensation paid by other public companies in our defined peer group, compensation data from Radford Global Life Sciences Survey and BIOCOM Total Rewards Survey, historical review of all executive officer compensation, and recommendations from our CEO (other than for his own salary). From time to time the Committee engages the services of outside compensation consultants to provide compensation research, analysis and recommendations. The Committee has the sole authority to select, compensate and terminate its external advisors.

The Compensation Committee utilizes the following components of compensation (described further below) to strike an appropriate balance between promoting sustainable and excellent performance and discouraging any inappropriate short-sighted risk-taking behavior:

- Base salary;
- Annual long-term equity compensation;
- Personal benefits and perquisites; and
- Acceleration and severance agreements tied to changes on control of the Company.

Base Salaries

None of our NEOs received base salary increases for 2016. While t he Compensation Committee had previously approved an increase in Mr. Girao's annual base salary from $265,000 to $300,000 for fiscal year 2016, at Mr. Girao's request, this salary increase was deferred. Commencing effective as of January 1, 2017, Mr. Girao's annual base salary was increased from $265,000 to $300,000.

In connection with determination of executive compensation for fiscal year 2017, the Compensation Committee directed Barney & Barney, LLC, its independent compensation consultant, to prepare an updated senior management compensation assessment. The Compensation Committee reviewed this assessment at its normally scheduled meeting in January 2017. Based on this assessment and including other data points and information considered by the Compensation Committee in its discretion, the Compensation Committee approved the following NEO base salaries for fiscal year 2017, which base salaries went into effect in March 2017: Dr. Hedrick: $510,000; Mr. Harris: $360,500; Mr. Girao: $309,000. The increases to Dr. Hedrick's and Mr. Girao's base salaries were made to move such salaries closer to or within the 50 th and 60 th percentile range of base salary compensation for similarly situated executive at our peer companies, per our corporate compensation philosophy. Our compensation analysis indicates that Dr. Hedrick's base salary is substantially closer to, but still below, this stated range, while Mr. Girao's base salary is now within this stated range. Mr. Harris' base salary remains above our stated range, but we believe that the Mr. Harris' actual duties and responsibilities, combined with his experience and skills (including Japanese linguistic and business/cultural fluency) are appropriately reflected in his base salary and other compensation.

Barney & Barney did not provide any services to us in 2016 beyond its engagement as an advisor to the Compensation Committee on compensation matters. After review and consultation with Barney & Barney, the Compensation Committee has determined that Barney & Barney is independent and there is no conflict of interest resulting from retaining Barney & Barney currently or during the year ended December 31, 2016. In reaching these conclusions, the Compensation Committee considered the factors set forth in Exchange Act Rule 10C-1 and NASDAQ listing standards.

Annual Bonuses (Executive Management Incentive Compensation Plan)

Our Compensation Committee adopted the Cytori Therapeutics Executive Management Incentive Compensation, or EMIC, plan to increase the performance-based component of our executives' compensation by linking their annual cash bonus payments to achievement of shorter-term performance goals. Target bonuses are reviewed annually and established as a percentage of the executives' base salaries, generally based upon seniority of the officer and targeted at or near the median of the peer group (with reference to our corporate compensation philosophy) and relevant survey data (including the Radford Global Life Sciences Survey and BIOcom Total Rewards Survey). Each year the Compensation Committee establishes corporate and individual objectives and respective target percentages, taking into account recommendations from our Chief Executive Officer as it relates to executive positions other than the Chief Executive Officer's compensation. Our Chief Executive Officer's EMIC plan is set by the Compensation Committee to align entirely with our overall corporate objectives, while the other NEOs are also provided individual goals that constitute a portion of their overall EMIC plans. After each fiscal year-end, our Chief Executive Officer provides the Compensation Committee with a written evaluation showing actual performance as compared to corporate and/or individual objectives, and the Compensation Committee uses that information, along with the overall corporate performance, to determine what percentage of each executive's bonus target will be paid out as a bonus for that year. Overall, we attempt to set the corporate and individual functional goals to be highly challenging yet attainable.

For 2016, the general corporate goals approved by the Board (upon recommendation of the Compensation Committee for purposes of executive compensation) were determined by the Compensation Committee to account for 100% of the target cash bonus amount payable under the EMIC plan for our Chief Executive Officer, Dr. Hedrick, and to account for 75% of the overall target bonus amount payable under the EMIC plans for our other NEOs. The Company's general corporate objectives included clinical, financial and operational objectives, including the achievement of certain enrollment goals for our STAR clinical trial; the achievement of certain year-end cash objectives, revenue goals and business development objectives; and various operational objectives.

The following individual objectives for the NEOs other than Dr. Hedrick expanded upon their particular functions in the overall corporate objectives and were to weighted as 25% of their respective overall target bonus amounts.

Mr. Girão's individual objectives included the achievement of certain investor-related, liquidity, and partner-related goals.

Mr. Harris's individual objectives included achievement of certain revenue, product utilization and business development/partnering goals.

Our NEOs' target bonuses for 2016 as a percentage of base salary were as follows: Dr. Hedrick, 50% (increased from 45% in 2015); Mr. Girao, 40% (increased from 30% in 2015); and Mr. Harris, 30% (unchanged from 2015, as Mr. Harris commenced employment with us in October 2015). The Compensation Committee, in its January 2017 meeting, evaluated our achievement in 2016 as compared to overall the corporate and individual objectives for the NEOs in the 2016 EMIC Plan described above. The Committee evaluated the overall results and then evaluated the NEOs' achievement relative to their own functional objectives and the results are tabulated in the table below:

Officer and Position	Target Bonus as a % of Salary	% of Target Bonus Awarded	Bonus Awarded as a % of Salary	Amount of 2016 Bonus Payable in 2017 (1)
Marc H. Hedrick, M.D. President & CEO	50%	65.0%	32.5%	$ 109,688
Tiago M. Girao, Chief Financial Officer	40%	66.3%	26.5% (2)	$ 59,670 (2)
John Harris VP & General Manager of Cell Therapy	30%	61.3%	18.4%	$ 48,274

(1) The 2016 bonus amounts are payable in 2017 in installments as follows: 50% of such amounts are payable on July 2, 2017, 25% of such amounts are payable on October 1, 2017 and the remaining 25% of such amounts are payable on January 1, 2018.

(2) Mr. Girao's 2016 bonus amount is based off of the increased base salary previously approved by the Compensation Committee for fiscal year 2016, but at Mr. Girao's request, this salary increase was deferred. Commencing effective as of January 1, 2017, Mr. Girao's annual base salary was increased from $265,000 to $300,000.

As part of its determination of target executive compensation for fiscal year 2017, the Compensation Committee determined bonus targets for our NEOs in consultation with Barney & Barney and with reference to Barney & Barney's senior management compensation assessment and other materials and information, as deemed necessary or appropriate by the Compensation Committee in its discretion. Upon completion of this review, the Compensation Committee approved target bonuses (as a percentage of base salary) for our NEOs for fiscal year 2017 as follows: Dr. Hedrick: 55%; Mr. Girao: 40%; Mr. Harris: 40%.

Long-Term Equity Compensation

We designed our long-term equity grant program to further align the interests of our executives with those of our stockholders and to reward the executives' longer-term performance. Historically, the Compensation Committee has granted individual option grant awards, although from time-to-time, to further increase the emphasis on compensation tied to performance, the Compensation Committee may grant other equity awards as allowed by the 2014 Equity Incentive Plan. The Compensation Committee grants stock options, restricted stock, restricted stock units and similar equity awards permitted under our plans based on its judgment as to whether the complete compensation packages to our executives, including prior equity awards, are appropriate and sufficient to retain and incentivize the executives and whether the grants balance long-term versus short-term compensation. The Compensation Committee also considers our overall performance as well as the individual performance of each NEO, and the potential dilutive effect of restricted stock awards, and the dilutive and overhang effect of the equity grant awards, and recommendations from the Chief Executive Officer (other than with respect to his own equity awards).

Stock options are granted with an exercise price equal to the fair market value of our common stock on the date of grant.

In January 2016, our NEOs were granted stock options to acquire shares of our common stock at an exercise price equal to the fair market value of our common stock on the Nasdaq Stock Market as of the date of grant, vesting in accordance with our standard four-year vesting schedules. Specifically, Dr. Hedrick, Mr. Girao and Mr. Harris were granted (on a post-split basis reflecting the 1-for-15 reverse stock split that we consummated in May 2016) options to purchase 55,613, 23,322 and 23,322 shares of our common stock, respectively.

In March 2017, as part of its determination of target executive compensation for fiscal year 2017, the Compensation Committee assessed long-term incentive compensation for our NEOs in consultation with Barney & Barney and with reference to Barney & Barney' s senior management compensation assessment and other materials and information, as deemed necessary or appropriate by the Compensation Committee in its discretion. Upon completion of its review, the Compensation Committee granted stock options to our NEOs to acquire shares of our common stock at an exercise price equal to the fair market value of our common stock on the Nasdaq Stock Market as of the date of grant, such options to vest in accordance with our standard four-year vesting schedules (subject to the NEOs' continued service as of the applicable vesting dates). Specifically, Dr. Hedrick, Mr. Girao and Mr. Harris were granted options to purchase 96,350, 31,100 and 31,100 shares of our common stock, respectively.

Personal Benefits and Perquisites

All of our executives are eligible to participate in our employee benefit plans, including medical, dental, vision, life insurance, short-term and long-term disability insurance, flexible spending accounts, 401(k), and an Employee Stock Purchase Program (ESPP). These plans are available to all full-time employees. In keeping with our philosophy to provide total compensation that is competitive within our industry, we offer limited personal benefits and perquisites to executive officers that include supplemental long-term disability insurance. You can find more information on the amounts paid for these perquisites to or on behalf of our NEOs in our 2016 Summary Compensation Table.

Company Acquisition / Post-Termination Compensation

We have entered into individual change of control and severance agreements, or CIC Agreements, with each of our NEOs. The CIC Agreements provide for certain severance benefits to be paid to each of our NEOs in the event of his involuntary termination without cause, or due to the executive's resignation for good reason (including the Company's material breach of its obligations, material reduction in duties, responsibilities, compensation or benefits, or relocation by more than 30 miles without prior consent), provided such termination or resignation occurs in connection with an acquisition of the Company. Upon such termination or resignation in the event of an acquisition, Dr. Hedrick would receive a lump sum payment of 18 times his monthly base salary, and 18 times his monthly COBRA payments, and Mr. Girão and Mr. Harris would each receive a lump sum payment of 12 times his monthly base salary, and 12 times his monthly COBRA payments. Notwithstanding the foregoing, these NEOs' employment may be terminated for cause (including extended disability, repudiation of their CIC Agreements, conviction of a plea of no contest to certain crimes or misdemeanors, negligence that materially harms us, failure to perform material duties without cure, drug or alcohol use that materially interferes with performance, and chronic unpermitted absence) without triggering an obligation for us to pay severance benefits under the CIC Agreements.

In addition, under the CIC Agreements, any unvested stock options granted to each of the above named executive officers would vest in full upon (1) the date of the executive's termination under the circumstances described above following entry into an acquisition agreement (subject to the actual consummation of the acquisition) or (2) consummation of an acquisition.

In all events, each NEO's entitlement to the benefits described above is expressly conditioned upon his execution and delivery to us of a CIC Agreement and a general release of claims, in the form attached to each CIC Agreement.

Outstanding Equity Awards at December 31, 2016

The following table sets forth information regarding outstanding equity awards held by our NEOs as of December 31, 2016.

	Option Awards					Stock Awards	
Name	Option Grant Date (1)	Number of Securities Underlying Unexercised Options (#) Exercisable (5)	Number of Securities Underlying Unexercised Options (#) Un-Exercisable (2)(5)	Option Exercise Price ($) (5)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
Marc H. Hedrick, M.D.,	2/26/2007	3,332	—	$ 81.60	2/26/2017	—	—
President and Chief Executive Officer	1/31/2008	4,000	—	$ 77.10	1/31/2018	—	—
	1/29/2009	5,000	—	$ 72.00	1/29/2019	—	—
	2/05/2010	7,333	—	$ 100.65	2/05/2020	—	—
	1/27/2011	3,666	—	$ 83.55	1/27/2021	—	—
	1/26/2012	7,666	—	$ 51.60	1/26/2022	—	—
	1/31/2013	11,968	254	$ 41.10	1/31/2023	—	—
	1/31/2013	5,984	127	$ 75.00	1/31/2023	—	—
	4/11/2014	13,068	5,932	$ 35.70	4/11/2024	—	—
	8/21/2014	6,666	—(3)	$ 21.00	8/21/2024	—	—
	1/30/2015	7,675	8,325	$ 7.20	1/30/2025	—	—
	1/04/2016	13,904	41,709	$ 2.81	1/04/2026		
Tiago M. Girao,	9/2/2014	5,840 (4)	4,160	$ 20.40	9/2/2024	—	—
VP of Finance Chief Financial Officer	1/30/2015	3,841 (4)	4,159	$ 7.20	1/30/2025	—	—
	1/04/2016	5,831	17,491	$ 2.81	1/04/2026	—	—
John Harris, VP and General Manager Cell Therapy	11/11/2015	6,516 (4)	15,817	$ 5.55	11/11/2025	—	—
	1/04/2016	5,831 (4)	17,491	$ 2.81	1/04/2026	—	—

(1) For a better understanding of this table, we have included an additional column showing the grant date of the stock options.

(2) Unless otherwise provided, stock options are subject to four-year vesting, and have a contractual term of 10 years from the date of grant. Awards presented in this table contain one of the following two vesting provisions:

- With respect to an initial stock option grant to an employee, 25% of the shares subject to the award vest on the one-year anniversary of the vesting start date, while an additional 1/48th of the remaining option shares vest at the end of each month thereafter for 36 consecutive months, or
- With respect to stock option grants made to an employee after one full year of employment, 1/48th of the shares subject to the award vest at the end of each month over a four-year period, as measured from the vesting start date.

(3) The August 2014 stock option awards vested to 50% of the shares subject to such awards after one year of service and the additional 50% vested on the second anniversary of the grant.

(4) These options were granted during the first year of the NEO's employment and thus were subject to the following vesting schedule: 25% of the shares subject to the award vest on the one-year anniversary of the vesting start date, while an additional 1/48th of the remaining option shares vest at the end of each month thereafter for 36 consecutive months.

(5) We consummated a 1-for-15 reverse stock split in May 2016. The amounts set forth in this column reflect this 1-for-15 reverse stock split.

Director Compensation

Generally, our Board believes that the level of director compensation should be based on time spent carrying out Board and committee responsibilities and be competitive with comparable companies. In addition, the Board believes that a significant portion of director compensation should align director interests with the long-term interests of stockholders. The Board makes changes in its director compensation practices only upon the recommendation of the Compensation Committee, and discussion and approval by the Board.

The following table summarizes director compensation awarded to, earned by or paid to our non-em ployee directors who served on our Board during fiscal year 2016.

(a)	(b)	(c)	(d)	(e)
Director Name [1]	**Fees Earned or Paid in Cash [2] ($)**	**Stock Awards ($)**	**Option Awards [3][4][5] ($)**	**Total ($)**
David M. Rickey, Chairman	$ 66,667	—	$ 10,082	$ 76,749
Richard J. Hawkins	$ 55,000	—	$ 10,082	$ 65,082
Paul W. Hawran	$ 50,000	—	$ 10,082	$ 60,082
Gary A. Lyons	$ 60,000	—	$ 10,082	$ 70,082
Gail K. Naughton, Ph.D.	$ 50,000	—	$ 10,082	$ 60,082
Tommy G. Thompson [6]	$ 13,750	—	$ 10,082	$ 23,832
Ronald A. Martell [7]	—	—	—	—

(1) Dr. Hedrick is not included in this table as he is an employee of ours and receives no extra compensation for his service as a director. The compensation received by Dr. Hedrick in his capacity as an employee is set forth in the 2016 Summary Compensation Table and further described in the "Narrative Disclosures to Summary Compensation Table" above

(2) In fiscal year 2016, (i) each non-employee director received a $30,000 retainer for service on our Board; (ii) each Compensation Committee, Governance and Nominating Committee and Audit Committee member received a $10,000 retainer for Committee service; (iii) the Chairman of the Board received an additional annual stipend of $30,000; (iv) the Chairman of the Audit Committee received an additional annual stipend of $15,000; and (v) the Chairmen of the Compensation Committee and the Governance and Nominating Committee each received an additional annual stipend of $15,000, respectively. Executive Committee members were exempt from receiving committee fees.

(3) Column (d) represents the grant date fair value of the option awards, computed in accordance with FASB ASC Topic 718, granted to our non-employee directors during 2016. For additional information on the valuation assumptions with respect to the 2016 grants, refer to Note 12 to our audited consolidated financial statements included in this Annual Report, regarding assumptions underlying valuation of equity awards. These amounts do not reflect the actual economic value that will be realized by our non-employee directors upon vesting of the stock options, exercise of the stock options or sale of the common stock underlying the stock.

(4) On January 4, 2016, our non-employee directors were awarded options to purchase 3,588 shares of our common stock. These options vested on the first anniversary of the date of grant. These option amounts reflect a 1-for 15 reverse stock split consummated by us on May 10, 2016.

(5) As of December 31, 2016, our non-employee directors held the following aggregate options: Mr. Rickey: 12,727 option shares; Richard Hawkins: 14,728 option shares; Paul Hawran: 12,728 option shares; Mr. Lyons: 6,654 option shares; Ronald Martell: None; Dr. Naughton: 6,654 option shares.

(6) Mr. Thompson stepped down from our Board in May 2016.

(7) Mr. Martell joined our Board in mid-December 2016, and did not receive any compensation for his brief service in 2016.

Director Compensation Program

In October 2016, the Compensation Committee approved a Director Compensation Program for fiscal year 2017, as subsequently amended. The materials elements of the 2017 Director Compensation Program are as follows:

- $40,000 annual cash retainer for Board members (an increase from $30,000 in 2016);
- $30,000 annual cash retainer for the Chairman of the Board (no change from 2016);
- $20,000 annual cash retainer for the Chairman of the Audit Committee (no change from 2016);
- $15,000 annual cash retainer for the Chairman of our Compensation Committee and Governance and Nominating Committee (no change from 2016);
- $10,000 annual cash retainer for each non-Chairman committee member (no change from 2016);
- *Initial grants for new directors* : Initial option grant, upon commencement of services, to purchase 50,000 shares of our common stock, vesting over two years in equal, annual installments as measured from the grant date;
- *Annual grants for existing directors* : Recurring option grants to purchase 25,000 shares of our common stock, vesting in one installment on the first anniversary of the grant date.

In January 2017, the Board granted options to our non-employee directors for fiscal year 2017 in accordance with the terms of the Director Compensation Program described immediately above, including approval of an initial optio n grant to Ron Martell in connection with his commencement of service as a Board member.

The Compensation Committee believes that these enhancements to the Director Compensation Program allow us to remain aligned with director compensation practices at our peer companies.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information under the heading "Equity Compensation Plan Information" in Part II, Item 5 is incorporated herein by reference.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding ownership of our Common Stock as of February 28, 2017 (or earlier date for information based on filings with the SEC) by (a) each person known to us to own more than 5% of the outstanding shares of our Common Stock, (b) each director and nominee for director, (c) our President and Chief Executive Officer, VP of Finance and Chief Financial Officer and each other NEO named in the compensation tables in this Annual Report on Form 10-K and (d) all directors and executive officers as a group.

The information in this table is based solely on statements in filings with the SEC or other reliable information. We believe, based on information provided to us, that each of the stockholders listed below has sole voting and investment power with respect to the shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

A total of 23,568,403 shares of our common stock were issued and outstanding as of February 28, 2017.

Name and Address of Beneficial Owner (1)	Number of Shares of Common Stock Owned (2)	Number of Shares of Common Stock Subject to Awards/Warrants Exercisable Within 60 Days (3)	Total Number of Shares of Common Stock Beneficially Owned (4)	Percent Ownership
Sabby Management, LLC. (5) 10 Mountainview Road, Suite 205 Upper Saddle River, NJ 07458	1,651,835	—	1,651,835	7.0%
Marc H. Hedrick, M.D.	78,133	111,739	189,872	*
Tiago M. Girao	14,084	20,067	34,151	*
John D. Harris	7,000	15,501	22,501	
David M. Rickey	95,231	22,935	118,166	*
Richard J. Hawkins	8,433	16, 405	24,838	*
Paul W. Hawran	8,236	12,727	20,963	*
Gary A. Lyons	4,357	7,604	11,961	*
Ronald A. Martell	—	—	—	*
Gail Naughton	2,400	6,654	9,054	*
All executive officers and directors as a group (11) (6)	221,517	224,833	446,350	1.9%

* Represents beneficial ownership of less than one percent (1%) of the outstanding shares as of February 28, 2017.

(1) Unless otherwise indicated, the address of each of the named individuals is c/o Cytori Therapeutics, Inc., 3020 Callan Road, San Diego, CA 92121.

(2) Unless otherwise indicated, represents shares of outstanding common stock owned by the named parties as of February 28, 2017.

(3) Shares of common stock subject to stock options or warrants currently exercisable or exercisable within 60 days of February 28, 2017 are deemed to be outstanding for computing the percentage ownership of the person holding such options and the percentage ownership of any group of which the holder is a member, but are not deemed outstanding for computing the percentage of any other person.

(4) The amounts and percentages of common stock beneficially owned are reported on the basis of regulations of the SEC governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a "beneficial owner" of a security if that person has or shares "voting power," which includes the power to vote or to direct the voting of such security, or "investment power," which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities for which that person has a right to acquire beneficial ownership within 60 days.

(5) Based upon a Schedule 13G/A filed January 6, 2017, reporting beneficial ownership as of December 31, 2016. Sabby Healthcare Master Fund, Ltd. ("Sabby Healthcare") has shared voting and dispositive power with respect to 1,132,643 shares. Sabby Volatility Warrant Master Fund, Ltd. ("Sabby Volatility") has shared voting and dispositive power with respect to 519,192 shares. Sabby Management , LLC (" Sabby Ma nagement ") serves as the investment manager of Sabby Healthcare and Sabby Volatility and has shared voting and dispositive power with respect to 1,651,835 of these shares. Hal Mintz, in his capacity as manager of Sabby Management , has shared voting and dis positive power with respect to 1,651,835 of these shares. Each of Sabby Management , LLC and Hal Mintz disclaim beneficial ownership over the securities owned except to the extent of their pecuniary interest therein. The address for Sabby Management is 10 M ountainview Road, Suite 205, Upper Saddle River, New Jersey 07458. The address for Mr. Mintz is c/o Sabby Management , LLC, 10 Mountainview Road, Suite 205, Upper Saddle River, New Jersey 07458.

(6) This aggregate amount includes 14,844 shares owned (or subject to options that are exercisable within sixty days of February 28, 2017) by Jeremy Hayden, General Counsel and Vice President of Business Development.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The following includes a summary of transactions since January 1, 2016 to which we have been a party in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest. We also describe below certain other transactions with our directors, executive officers and 5% stockholders. We believe the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described below were comparable to terms available or the amounts that would be paid or received, as applicable, from unaffiliated third parties.

Rights Offering

In June 2016, we consummated a rights offering, or Rights Offering, to our stockholders of record (as of May 20, 2016) to subscribe for units at a subscription price of $2.55 per unit. Pursuant to the Rights Offering, we sold an aggregate of 6,704,852 units consisting of a total of 6,704,852 shares of common stock and 3,352,306 warrants to our stockholders, or Warrants, with each Warrant exercisable for one share of common stock at an exercise price of $3.06 per share. Certain of our directors participated in the Rights Offering and along with other participants in the Rights Offering, purchased common stock and Warrants to purchase our common stock. The Warrants trade on the Nasdaq Stock Market under the symbol "CYTXW."

Director and Officer Indemnification

Our amended and restated certificate of incorporation, as amended, and our amended and restated bylaws, as amended, provide that we will indemnify each of our directors and officers to the fullest extent permitted by the Delaware General Corporation Law.

Stock Option Grants to Executive Officers and Directors

We have granted stock options to our executive officers and non-employee directors as more fully described elsewhere in this Annual Report.

The information under the heading "Board Independence" in Part III, Item 10 is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

On July 12, 2016, we notified KPMG, LLP, or KPMG, of its dismissal as our independent registered public accounting firm, effective as of that date. The decision to change independent registered public accounting firms was recommended by our Audit Committee and was approved by the Board.

On July 12, 2016, the Audit Committee appointed BDO USA, LLP, or BDO, as our independent registered public accounting firm for the fiscal year ending December 31, 2016, subject to completion of its standard client acceptance procedures (which were subsequently completed). The decision to engage BDO as our independent registered public accounting firm was recommended by the Audit Committee and approved by the Board.

The Audit Committee reviews and must pre-approve all audit and non-audit services performed by our independent registered public accounting firm, as well as the fees charged by it for such services. No fees charged by KPMG or BDO during 2016 were approved under the Regulation S-X Rule 2.01(c)(7)(i)(C) exception to the pre-approval requirement. In its review of non-audit service fees, the Audit Committee considers, a mong other things, the possible impact of the performance of such services on the accounting firm's independence.

The following table shows the aggregate fees paid or accrued by us for the audit and other services provided by KPMG for fiscal years ended December 31, 2016 and 2015, and provided by BDO for the fiscal year ended December 31, 2016.

	Fiscal Year Ended December 31,		
	BDO	KPMG	
	2016	2016	2015
Audit Fees (1)	$ 281,204	$ 261,400	$ 470,000
Audit Related Fees (2)	—	—	40,000
Tax Fees (3)	35,000	4,823	58,000
Total	$ 316,204	$ 266,223	$ 568,000

(1) Audit fees consist of fees for professional services performed by BDO USA, LLP and KPMG LLP for the audit of our annual financial statements included in this Form 10-K filing and review of financial statements included in our quarterly Form 10-Q filings, reviews of registration statements and issuances of consents, and services that are normally provided in connection with statutory and regulatory filings or engagements.

(2) Audit related fees consist of fees for assurance and related services, performed by BDO USA, LLP and KPMG LLP that are reasonably related to the performance of the audit or review of our financial statements.

(3) Tax fees consist of fees for professional services performed by BDO USA LLP and KPMG LLP with respect to tax compliance, tax advice, tax consulting and tax planning.

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) (1) Financial Statements

(a) (2) Financial Statement Schedules

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS

For the years ended December 31, 2016 and 2015
(in thousands)

	Balance at beginning of year	Additions (A)	Deductions (B)	Other (C)	Balance at end of year
Allowance for doubtful accounts					
Year ended December 31, 2016	$ 797	$ —	$ (630)	$ —	$ 167
Year ended December 31, 2015	$ 1,523	$ —	$ (709)	$ (17)	$ 797

(A) Includes charges to costs and expenses.

(B) Deductions for uncollectible accounts receivable includes payments collected and devices recovered from customers.

(C) Miscellaneous activity.

(a) (3) Exhibits

List of Exhibits required by Item 601 of Regulation S-K. See Item 15(b) below.

(b) Exhibits

The exhibits listed in the accompanying "Exhibit Index" are filed, furnished or incorporated by reference as part of this Annual Report, as indicated.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

CYTORI THERAPEUTICS, INC.

By: /s/ Marc H. Hedrick, MD
Marc. H. Hedrick, MD
President & Chief Executive Officer
March 24, 2017

Pursuant to the requirements of the Securities Exchange Act of 1934, this annual report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ David M. Rickey David M. Rickey	*Chairman of the Board of Directors*	March 24, 2017
/s/ Marc H. Hedrick, MD Marc H. Hedrick, MD	*President & Chief Executive Officer (Principal Executive Officer)*	March 24, 2017
/s/ Tiago M. Girão Tiago M. Girão	*VP of Finance and Chief Financial Officer (Principal Financial Officer)*	March 24, 2017
/s/ Paul W. Hawran Paul W. Hawran	*Director*	March 24, 2017
/s/ Gail K. Naughton, PhD Gail K. Naughton, PhD	*Director*	March 24, 2017
/s/ Richard J. Hawkins Richard J. Hawkins	*Director*	March 24, 2017
/s/ Gary A. Lyons Gary A. Lyons	*Director*	March 24, 2017
/s/ Ronald A. Martell Ronald A. Martell	*Director*	March 24, 2017

EXHIBIT INDEX

CYTORI THERAPEUTICS, INC.					
Exhibit Number	**Exhibit Title**	**Filed with this Form 10-K**	**Incorporated by Reference**		
			Form	**File No.**	**Date Filed**
3.1	Composite Certificate of Incorporation.		10-K	000-32501 Exhibit 3.2	03/11/2016
3.2	Amended and Restated Bylaws of Cytori Therapeutics, Inc.		10-Q	000-32501 Exhibit 3.2	08/14/2003
3.3	Amendment to Amended and Restated Bylaws of Cytori Therapeutics, Inc.		8-K	001-34375 Exhibit 3.1	05/06/2014
3.4	Certificate of Designation of Preferences, Rights and Limitations of Series A 3.6% Convertible Preferred Stock		8-K	001-034375 Exhibit 3.1	10/08/2014
3.5	Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended		8-K	001-34375 Exhibit 3.1	05/10/2016
4.1	Warrant to Purchase Common Stock issued by the Company on October 14, 2008 in favor of Silicon Valley Bank, pursuant to the Loan and Security Agreement dated October 14, 2008.		10-K	000-32501 Exhibit 10.62	03/06/2009
4.2	Warrant to Purchase Common Stock issued by the Company on June 11, 2010 in favor of GE Capital Equity Investments, Inc., pursuant to the Amended and Restated Loan and Security Agreement dated June 11, 2010.		8-K	001-34375 Exhibit 10.73	06/17/2010
4.3	Warrant to Purchase Common Stock issued by the Company on June 11, 2010 in favor of Silicon Valley Bank, pursuant to the Amended and Restated Loan and Security Agreement dated June 11, 2010.		8-K	001-34375 Exhibit 10.74	06/17/2010
4.4	Warrant to Purchase Common Stock issued by the Company on June 11, 2010 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated June 11, 2010.		8-K	001-34375 Exhibit 10.75	06/17/2010
4.5	Warrant to Purchase Common Stock issued by the Company on September 9, 2011 in favor of GE Capital Equity Investments, Inc., pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.		8-K	001-34375 Exhibit 10.84	09/15/2011
4.6	Warrant to Purchase Common Stock issued by the Company on September 9, 2011 in favor of Silicon Valley Bank, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.		8-K	001-34375 Exhibit 10.85	09/15/2011
4.7	Warrant to Purchase Common Stock issued by the Company on September 9, 2011 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.		8-K	001-34375 Exhibit 10.86	09/15/2011

4.8	Warrant to Purchase Common Stock issued by the Company on September 9, 2011 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.		8-K	001-34375 Exhibit 10.87	09/15/2011
4.9	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.		10-Q	001-34375 Exhibit 4.17	08/09/2013
4.10	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.		10-Q	001-34375 Exhibit 4.18	08/09/2013
4.11	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.		10-Q	001-34375 Exhibit 4.19	08/09/2013
4.12	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.		10-Q	001-34375 Exhibit 4.20	08/09/2013
4.13	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.		10-Q	001-34375 Exhibit 4.21	08/09/2013
4.14	Form of Warrant to Purchase Common Stock for Investors in the Units		8-K	001-34375 Exhibit 4.1	05/30/2014
4.15	Form of Warrant to Purchase Common Stock for Placement Agent of the Units		8-K	001-34375 Exhibit 4.2	05/30/2014
4.16	Form of Amendment to Warrant to Purchase Common Stock.		8-K	001-34375 Exhibit 4.1	09/08/2014
4.17	Form of Warrant to Purchase Common Stock.		8-K	001-34375 Exhibit 4.2	09/08/2014
4.18	Form of Warrant for Purchasers in the Units		8-K	001-034375 Exhibit 4.1	10/08/2014
4.19	Form of Initial Warrant to Purchase Common Stock		8-K	001-034375 Exhibit 4.1	05/05/2015
4.20	Form of Additional Warrant to Purchase Common Stock		8-K	001-034375 Exhibit 4.2	05/05/2015
4.21	Form of Pre-Funded Warrant to Purchase Common Stock		8-K	001-034375 Exhibit 4.3	05/05/2015
4.22	Amendment to Common Stock Purchase Warrant		10-K	001-34375 Exhibit 4.23	03/11/2015
4.23	Amendment to Series A-1 Warrant to Purchase Common Stock		10-K	001-34375 Exhibit 4.24	03/11/2015
4.24	Amendment to Series A-2 Warrant to Purchase Common Stock		10-K	001-34375 Exhibit 4.25	03/11/2015
4.25	Form of Non-Transferable Subscription Rights Certificate		S-1/A	333-210628 Exhibit 4.26	05/11/2016
4.26	Form of Series R Warrant underlying the Units		S-1/A	333-210628 Exhibit 4.27	05/11/2016

4.27	Form of Warrant Agreement between Cytori Therapeutics, Inc. and Broadridge Corporate Issuer Solutions, Inc.		S-1/A	333-210628 Exhibit 4.28	05/11/2016
10.1#	Amended and Restated 1997 Stock Option and Stock Purchase Plan.		10-K	000-32501 Exhibit 10.1	03/30/2001
10.2#	2004 Equity Incentive Plan of Cytori Therapeutics, Inc		8-K	000-32501 Exhibit 10.1	08/27/2004
10.3#	Form of Options Exercise and Stock Purchase Agreement Relating to the 2004 Equity Incentive Plan.		10-Q	000-32501 Exhibit 10.23	11/15/2004
10.4#	Form of Notice of Stock Options Grant Relating to the 2004 Equity Incentive Plan.		10-Q	000-32501 Exhibit 10.24	11/15/2004
10.5+	License & Royalty Agreement, effective August 23, 2007, by and between Olympus-Cytori, Inc. and Cytori Therapeutics, Inc.		10-Q	000-32501 Exhibit 10.49	11/13/2007
10.6	Common Stock Purchase Agreement, dated March 28, 2007, by and between Cytori Therapeutics, Inc. and Green Hospital Supply, Inc.		10-Q	000-32501 Exhibit 10.46	05/11/2007
10.7	Common Stock Purchase Agreement, dated February 8, 2008, by and between Green Hospital Supply, Inc. and Cytori Therapeutics, Inc.		8-K	000-32501 Exhibit 10.51	2/19/2008
10.8	Amendment No. 1, dated February 29, 2008, to Common Stock Purchase Agreement, dated February 8, 2008, by and between Green Hospital Supply, Inc. and Cytori Therapeutics, Inc.		8-K	000-32501 Exhibit 10.51	2/29/2008
10.9	Lease Agreement entered into on April 2, 2010, between HCP Callan Rd, LLC. and Cytori Therapeutics, Inc.		10-Q	001-34375 Exhibit 10.69	05/06/2010
10.10	Common Stock Purchase Agreement, dated December 6, 2010, by and among Cytori Therapeutics, Inc. and Astellas Pharma Inc.		8-K	001-34375 Exhibit 10.76	12/09/2010
10.11#	Form of Notice and Restricted Stock Award Agreement for grants of performance-based restricted stock awards under the 2004 Equity Incentive Plan.		8-K	001-34375 Exhibit 10.1	03/04/2011
10.12	First Amendment to Lease Agreement entered into on November 4, 2011, between HCP Callan Rd, LLC. and the Company.		10-Q	001-34375 Exhibit 10.88	11/08/2011
10.13#	2011 Employee Stock Purchase Plan		DEF 14A	001-34375 Appendix A	05/02/2011
10.14+	Contract HHSO100201200008C dated September 27, 2012, by and between the Company and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority.		8-K	001-34375 Exhibit 10.90	10/03/2012
10.15	Joint Venture Termination Agreement dated May 8, 2013 by and between the Company and Olympus Corporation.		10-Q	001-34375 Exhibit 10.91	05/10/2013
10.16+	Puregraft Sale-License-Supply Agreement, dated July 30, 2013, by and between the Company and Bimini Technologies LLC.		10-Q/A	001-34375 Exhibit 10.93	11/12/2013

10.17+	Amended and Restated License and Supply Agreement dated January 30, 2014, by and between the Company and Lorem Vascular Pty. Ltd.		8-K	001-34375 Exhibit 10.94	02/04/2014
10.18	Sales Agreement, dated May 12, 2014, by and between Cytori Therapeutics, Inc. and Cowen and Company, LLC.		8-K	001-34375 Exhibit 10.1	05/12/2014
10.19	Contract HHSO100201200008C Amendment No. 1 dated August 18, 2014, by and between the Company and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority.		8-K	001-34375 Exhibit 10.99	08/19/2014
10.20	Form of Securities Purchase Agreement by and between Cytori Therapeutics, Inc. and the Purchasers (as defined therein), dated as of October 8, 2014.		8-K	001-034375 Exhibit 10.1	10/08/2014
10.21	Amendment of Solicitation/Amendment of Contract, effective December 17, 2014, by and between ASPR-BARDA and Cytori Therapeutics, Inc	X			
10.22	Amendment of Solicitation/Modification of Contract, effective January 5, 2015, by and between ASPR-BARDA and Cytori Therapeutics, Inc	X			
10.23	Amendment One to the Securities Purchase Agreement, dated March 16, 2015, between the Company and certain institutional investors		10-Q	001-034375 Exhibit 10.1	05/11/2015
10.24	Form of Securities Purchase Agreement, dated May 5, 2015, by and among Cytori Therapeutics, Inc. and the investors named therein		8-K	001-034375 Exhibit 10.1	05/05/2015
10.25	Placement Agency Agreement, dated May 5, 2015, by and between Cytori Therapeutics, Inc. and Mizuho Securities USA Inc.		8-K	001-034375 Exhibit 10.2	05/05/2015
10.26	Amendment One to Joint Venture Termination Agreement, dated April 30, 2015, by and between Cytori Therapeutics, Inc. and Olympus Corporation		8-K	001-034375 Exhibit 10.1	05/05/2015
10.27	Loan and Security Agreement, dated May 29, 2015, by and between Cytori Therapeutics, Inc. and Oxford Finance, LLC		10-Q	001-034375 Exhibit 10.4	08/10/2015
10.28	Amendment One to the Securities Purchase Agreement between the Company and certain institutional investors dated May 5, 2015		10-K	001-034375 Exhibit 10.111	03/11/2016
10.29#	2015 New Employee Incentive Plan		8-K	001-034375 Exhibit 10.1	01/05/2016
10.30#	Form of Agreement for Acceleration and/or Severance		10-K	001-034375 Exhibit 10.113#	03/11/2016
10.31#	Form of Stock Option Agreement under the New Employee Incentive Plan.		S-8	333-210211 Exhibit 99.4	03/15/2016
10.32#	Form of Notice of Grant of Stock Option under the 2015 New Employee Incentive Plan.		S-8	333-210211 Exhibit 99.5	03/15/2016
10.33#	2014 Equity Incentive Plan of Cytori Therapeutics, Inc., as amended		DEF-14A	001-034375 Appendix A	03/16/2016
10.34	Amendment Two to Joint Venture Termination Agreement, dated January 8, 2016.		10-Q	001-34375 Exhibit 10.4	05/10/2016

10.35	Amendment of Solicitation/Amendment of Contract, effective April 1, 2016, by and between ASPR-BARDA and Cytori Therapeutics, Inc.		10-Q	001-34375 Exhibit 10.1	08/05/2016
10.36	Amendment of Solicitation/Amendment of Contract, effective September 9, 2016, by and between ASPR-BARDA and Cytori Therapeutics, Inc.		10-Q	001-34375 Exhibit 10.1	11/09/2016
10.37	Purchase Agreement between Cytori Therapeutics, Inc. and Lincoln Park Capital Fund, LLC, dated December 22, 2016.		8-K	001-34375 Exhibit 10.1	12/29/2016
10.38	Registration Rights Agreement between Cytori Therapeutics, Inc. and Lincoln Park Capital Fund, LLC, dated December 22, 2016.		8-K	001-34375 Exhibit10.2	12/29/2016
10.39#	Third Amendment to the Cytori Therapeutics, Inc. 2014 Equity Incentive Plan, dated January 26, 2017.	X			
10.40 †	Asset Purchase Agreement by and between Cytori Therapeutics, Inc. and Azaya Therapeutics, Inc., effective Jan. 16, 2017.	X			
10.41	Lease Agreement, dated February 27, 2017, by and between 6262 Lusk Investors LLC and Cytori Therapeutics, Inc.	X			
10.42#	First Amendment to the Cytori Therapeutics, Inc. 2015 New Employee Incentive Plan, dated Jan. 26, 2017.	X			
23.1	Consent of BDO USA, LLP, Independent Registered Public Accounting Firm	X			
23.2	Consent of KPMG, LLP, Independent Registered Public Accounting Firm	X			
31.1	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	X			
31.2	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	X			
32.1	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	X			
101.INS	XBRL Instance Document	X			
101.SCH	XBRL Schema Document	X			
101.CAL	XBRL Calculation Linkbase Document	X			
101.DEF	XBRL Definition Linkbase Document	X			
101.LAB	XBRL Label Linkbase Document	X			
101.PRE	XBRL Presentation Linkbase Document	X			

Indicates management contract or compensatory plan or arrangement.

\+ *Confidential treatment has been granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.*

† *Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.*

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT	1. CONTRACT ID CODE	**PAGE OF PAGES** 1 | 2

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
0002	See Block 16C	OS145932	

6. ISSUED BY CODE	ASPR-BARDA	7. ADMINISTERED BY *(If other than item 6)* CODE	ASPR-BARDA01
ASPR-BARDA 200 Independence Ave., S.W. Room 640-G Washington DC 20201		ASPR-BARDA 330 Independence Ave, SW, Rm G644 Washington DC 20201	

8. NAME AND ADDRESS OF CONTRACTOR *(No., Street, County, State, and Zip Code)*		
CYTORI THERAPEUTICS, INC 1386447 CYTORI THERAPEUTICS, INC. 3020 3020 CALLAN RD SAN DIEGO CA 921211109	(x)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED *(SEE ITEM 11)*
	x	10A. MODIFICATION OF CONTRACT/ORDER NO. HHSO100201200008C
		10B. DATED *(SEE ITEM 13)* 09/28/2012
CODE: 1386447	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)* Net Increase: $1,999,319.00

..2015.1992015.25106

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
☒	D. OTHER (Specify type of modification and authority) FAR 52.243-2 Alternate 1 (APR 1987) Changes – cost – reimbursement and Mutual agreement of the parties

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Tax ID Number : 33-0827593
DUNS Number : 111029179
Proof of Concept for Use of the Celution System as a Medical Countermeasure for Thermal Burn

The purpose of this modification is to add supplemental funding in the amount of $1,999,319 to Option 1 of the contract. The Period of Performance remains unchanged.

See Attached.

Delivery: 11/28/2014
Delivery Location Code: HHS/OS/ASPR
Continued…
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*		16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)* THOMAS P. HASTINGS	
15B. CONTRACTOR/OFFEROR *(Signature of person authorized to sign)*	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	16C. DATE SIGNED

NAME OF OFFEROR OR CONTRACTOR
CYTORI THERAPEUTICS, INC 1386447

ITEM NO (A)	SUPPLIES / SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	HHS/OS/ASPR 200 C St SW WASHINGTON DC 20201 US Appr. Yr.: 2015 CAN: 1992015 Object Class: 25106 FOB: Destination Period of Performance : 09/28/2012 to 09/27/2016 Add Item 3 as follows:				
3	ASPR-15-00857 – Cytori Therapeutics Inc supplemental funds to Option 1 HHSO10020120008C Obligated Amount : $1,999,319.00				1,999,319.00

Beginning with the effective date of this modification, the below portions of contract HHSO100201200008C between the Government and Contractor are modified as follows:

1. ARTICLE B.2., ESTIMATED COST AND FIXED FEE, is hereby deleted in its entirely and replaced with the following

a. The total estimated cost of *the base performance segment* is $4,356,912.

b. The total fixed fee for *the base performance segment* is $326,768. The fixed fee shall be paid subject to Allowable Cost and Payment and Fixed Fee Clauses.

c. The total amount of *the base performance segment,* CLIN 0001, represented by the sum of the total estimated cost plus fixed fee is $4,683,680.

d. It is estimated that the amount currently allotted will cover performance of *the base performance segment* through 27 September 2014.

e. **The total estimated cost of *the Option 1 (CLIN 0002) performance segment* is increased by $1,859,832, from $11,238,078 to $13,097,910.**

f. **The total fixed fee for *the Option 1 (CLIN 0002) performance segment* is increased by $139,487, from $842,856 to $982,343. The fixed fee shall be paid subject to Allowable Cost and Payment and Fixed Fee Clauses.**

g. **The total amount of *the Option 1 (CLIN 0002) performance segment* , represented by the sum of the total estimated cost plus fixed fee, is increased by $1,999,319, from $12,080,934 to $14,080,253.**

h. It is estimated that the amount currently allotted will cover *the Option 1 (CLIN 0002) performance segment* through 27 September 2016.

i. The Contractor shall maintain records of all contract costs and such records shall be subject to the Audit and Records-Negotiation and Final Decisions on Audit Findings clauses of the General Clauses.

CLIN/ Option	Estimated Period of Performance	Supplies/Services	Total Estimated Cost	Fixed Fee	Total Est. Cost Plus Fixed Fee
0001	28 Sept 2012 through 27 Sept 2014	Studies needed to demonstrate proof-of-concept for use of the Celution System as a medical countermeasure for combined injury involving thermal burn and radiation exposure. Reports and Other Data Deliverables	$4,356,912	$326,768	$4,683,680
0002/1	18 Aug 2014 Through 27 Sept 2016 (unchanged)	Research and development, regulatory, clinical, and other tasks required for initiation of a Pilot Clinical Trial of the Celution System in thermal burn injury. Reports and Other Data Deliverables	**$13,097,910**	**$982,343**	**$14,080,253**

2. SECTION C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK, ARTICLE C.1., STATEMENT OF WORK, is hereby deleted and replaced with the following

Independently and not as an agent of the Government, the Contractor shall furnish all the necessary services, qualified personnel, material, equipment, and facilities not otherwise provided by the Government as needed to perform the Statement of Work dated November 25, 2014, set forth in SECTION J-List of Attachments, attached hereto and made a part of the contract.

3. ARTICLE F.2., DELIVERABLES, is hereby deleted in its entirety and replaced with the following:

Successful performance of the final contract shall be deemed to occur upon performance of the work set forth in the Statement of Work dated 25 November, 2014 set forth in SECTION J-List of Attachments of this contract and upon delivery and acceptance, as required by the Statement of Work, by the Contracting Officer, or the duly authorized representative, of the following items in accordance with the stated delivery schedule:

The items specified below as described in the REPORTING REQUIREMENTS Article in SECTION C of this contract and the Statement of Work dated 25 November 2014 set forth in SECTION J-List of Attachments will be required to be delivered F.O.B. Destination as set forth in FAR 52.247-34, F.O.B. DESTINATION, (NOVEMBER 1991), and in accordance with and by the date(s) specified below and any specifications stated in SECTION D, PACKAGING, MARKING AND SHIPPING, of this contract. All reports identified below relate solely to the development activity funded under this contract:

The Cytori Deliverables Schedule is hereby modified as attached, beginning with the contract Base Period. The General Deliverables remain the same.

4. SECTION J – LIST OF ATTACHMENTS, Attachment 1. STATEMENT OF WORK is hereby deleted in its entirety and replaced with the following (attached):

Attachment 1. Statement of Work, dated 25 November, 2014.

5. In Block 14 of the SF26, the following CAN information is added:
CAN# 1992015: FY 15 $1,999,319

All other terms and conditions of the contract remain unchanged.

Statement of Work

Preface

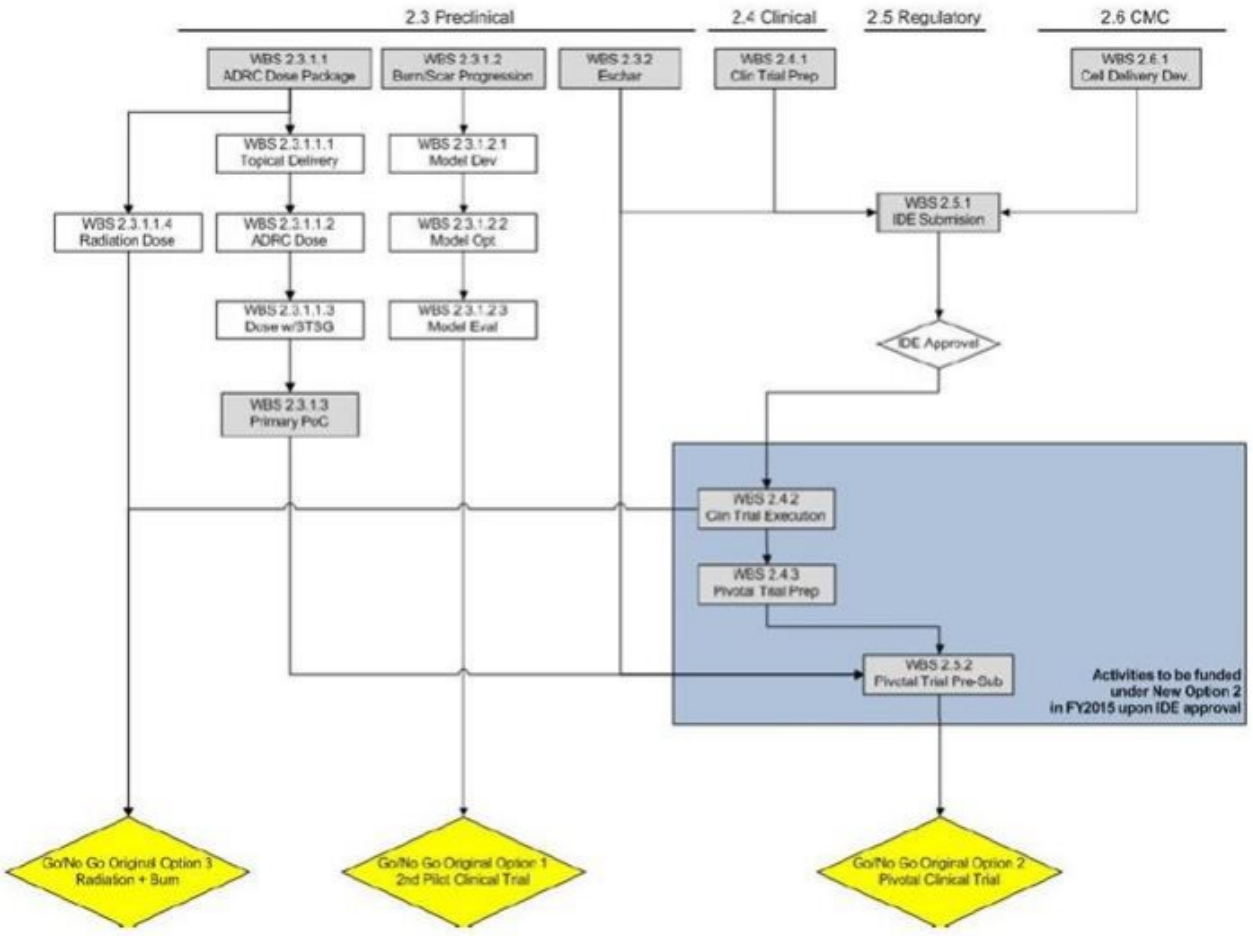
Independently and not as an agent of the Government, the Contractor shall be required to furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the Government, as needed to perform the Statement of Work submitted in response to Broad Agency Announcement (BAA) BARDA CBRN BAA 11-100-SOL-00009.

Introduction

The goal of this project is to develop a countermeasure for thermal burn injury that requires minimal to no stockpiling and that is effective in the treatment of both thermal burn injury and thermal burn injury that is complicated by concomitant radiation exposure. The issue of stockpiling will be addressed by development of a countermeasure that is effectively pre-deployed through regular commercially viable use. Ideally, this commercial use is in both thermal burn—thereby ensuring availability within the burn center of person trained in operation and use of the countermeasure in burn—and outside of burn, thereby bolstering wider commercial viability.

Timeline

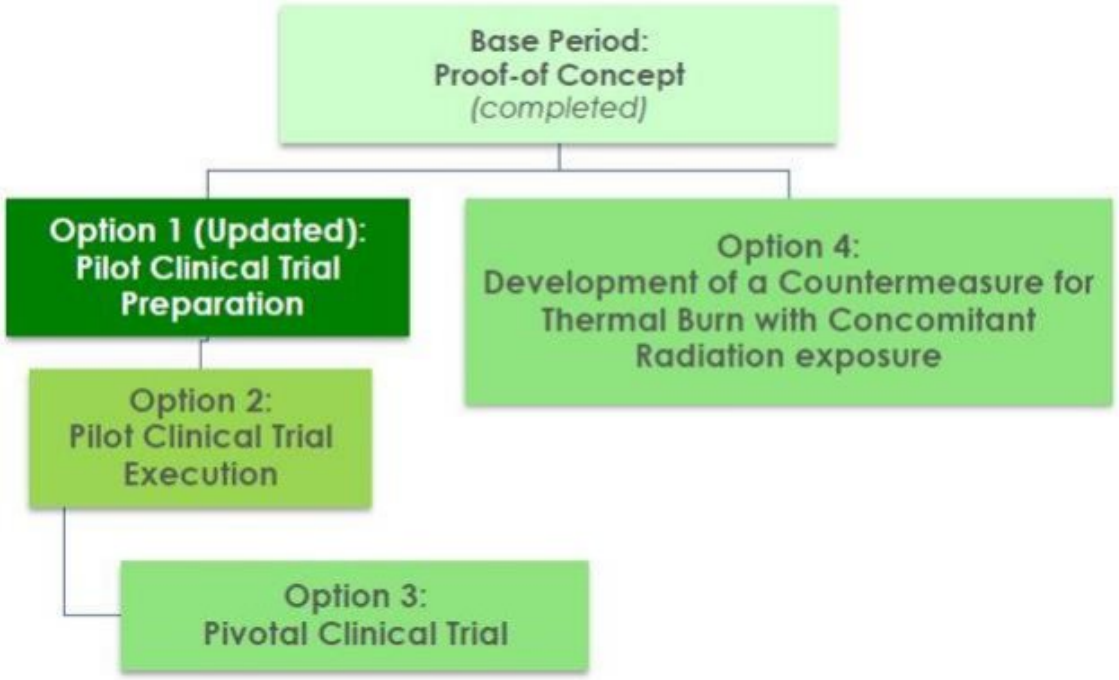
A flowchart of the task within this CLIN is shown below.



Tasks

Note: At this time Options 2, 3, and 4 from the original proposal are unchanged from the original Statement of Work. It is anticipated that these Options will be re-evaluated and modified if and when Cytori and BARDA determine that it is appropriate to hold future In-Process Review Meetings with the goal of determining whether or not the PHEMCE will execute these Options.

Updated Project Overview



- Option 1, as amended from the original Statement of Work, includes research and development, regulatory, clinical, and other tasks required for preparation for a Pilot Clinical Trial of the Celution System in thermal burn injury. Activities include those needed to obtain FDA approval to execute the trial. The Option also includes development of a system and process suitable for delivering ADRCs to thermal burn wounds within the clinical trial as well as preclinical activities dedicated to increasing understanding of the countermeasure in thermal burn.

- Option 2, is to be funded in FY15 upon FDA approval to initiate the Pilot Clinical Trial. Option 2 (New) includes tasks needed to execute and complete the Pilot Clinical Trial, those needed to prepare trial data for submission to FDA within a Pre-Submission Meeting Package in support of a proposed Pivotal Trial, and, potentially, support for ongoing development of CT-X2.

    - Option 2 is to be triggered by FDA approval to execute the study

- Option 3 includes a Pivotal Clinical Trial leading to FDA licensure for use of the Celution System in thermal burn injury

    - Option 3 will be triggered by the FDA's response to the proposed Pivotal Study Design and Clinical and Preclinical Support Data submitted in a Pre-Submission Meeting Package. Specifically, the Option will be triggered if the FDA indicates adequacy of the study design and preclinical and clinical data set with regard to moving forward to the proposed clinical trial.

- Option 4 includes studies to optimize the treatment for thermal burn injury with concomitant radiation exposure. Ideally these activities would lead to development of FDA Emergency Use Instructions

    - The triggers for Option 4 remain unchanged from the original submission. Specifically, it will be triggered if the following three parameters are met: (1) autologous ADRCs mediate improved healing of thermal burn injury in an irradiated animal; (2) the cell output of the CT-X2 is equivalent or superior to that of the Celution 800; and (3) ADRCs can be obtained from patients with thermal burn injury. Studies executed within WBS 2.3.1.1.5 may further inform this decision.

- The current CLIN includes activities in WBS 2.3.1.2 (Burn Wound/Scar Progression). Demonstration of efficacy and practicability of ADRC treatment to reduce scar progression following burn wounds to a meaningful degree would trigger consideration of a further new component of support which would fund a Pilot Clinical Trial in Burn Wound Progression.

    - Specifically, such an Option would be triggered if the application of ADRCs led to a reduction of more than approximately 33% in the incidence or severity of scarring.

Base Period

The Base Period obtained proof of concept data for use of the Celution System as a medical countermeasure for combined injury involving radiation exposure and thermal burn injury. Specifically, in the absence of radiation exposure, autologous ADRCs improved healing parameters including increased burn wound re-epithelialization. The same improved healing was also observed in animals subjected to total body irradiation sufficient to induce profound, transient myelosuppresion. Viable, functional ADRCs were reliably and reproducibly obtained from patients with severe full thickness thermal burn injury. Finally, a prototype of Cytori's next generation Celution System (CT-X2) showed cell processing capabilities that were equivalent or superior to those of the current generation system, Celution 800.

Option 1: Pilot Clinical Trial Preparation Original and Supplement

Note: the only items impacted by the Supplement are under WBS 2.1.2 (which includes items in both the Original and Supplement) and WBS 2.6.1.3 which is new and only in the Supplement.

Specific Objectives and Scope

As proposed herein, the Contractor intends to design, execute, and complete robust preclinical and to design a clinical study that meet two objectives: (1) obtain FDA approval to execute a pilot clinical trial of the countermeasure in thermal burn injury wherein said trial will inform and support development of a pivotal clinical trial to be funded by a future CLIN/contract option; and (2) execute preclinical studies that will expand understanding of the countermeasure with respect to cell dose, route of administration, and efficacy in arresting or slowing progression of indeterminate thickness thermal burn injury or in addressing scarring following thermal burn.

Start Date: Q4, FY14

WBS 2.1 Technical and Project Management: *Original and Supplement*

Project-wide Activities

Purpose

Execution of activities throughout this project will require that meetings, site visits, In-Process Reviews, and related activities are properly coordinated and that the outcome of said activities be communicated to BARDA and other stakeholders in an efficient, timely manner. The purpose of these project-wide activities is to facilitate this coordination and communication.

Description

Examples of activities performed to facilitate meetings, site visits, In-Process Reviews and similar activities include: scheduling meetings, timely distribution of an agenda in advance of the meeting, and timely distribution of meeting minutes, action items, and other deliverables after the meeting.

Deliverable : a. Ensure proper coordination of all meetings, site visits, In-Process Reviews
b. Disposition of meeting minutes and action items and all deliverables under this Statement of Work to BARDA

Success Criterion : CO and PO deem meeting communications are managed satisfactorily

Timing : Full duration of project (including all options)

2.1.1.1 Kick-off Meeting: ***Unchanged from Original***

Following a kickoff meeting with BARDA, Cytori will update the project schedule and provide an updated Task and Deliverables list to the Contract Officer.

Deliverable : Updated Task and Deliverables Document

Success Criterion: Includes updates of tasks and deliverables as discussed with CO and PO during kickoff meeting

Timing : Q2, FY15

2.1.1.2 Complete new hiring needed for execution of contract activities ***Unchanged from Original***

Execute hiring of new staff needed for execution of CLIN activities

Deliverable : Report showing that key positions have been filled and added to contract provided within bi-weekly meetings

Success Criteria: Positions identified during negotiations have been filled by qualified persons

Timing : Q3, FY15

2.1.2 Maintain Subcontractor Management Plan: ***Original and Supplement***

Maintain Subcontractor Management Plan

Deliverable : Updated Subcontractor Management Plan

Success Criteria: Identifies key interactions between prime contractor and subcontractor with regard to progress updates and risk management

Timing : Semi-annually starting six months after award of CLIN

2.1.3 Maintain Risk Management Plan: *Unchanged from Original*

Maintain Risk Management Plan

Deliverable : Updated Risk Management Plan

Success Criteria: Identifies key risks, assesses mitigations, contingencies, and impact as well as update process

Timing : Semi-annually starting six months after award of CLIN

2.1.4 EVMS Systems Report: *Unchanged from Original*

Deliverable : EVMS Systems Report

Success Criteria: Acceptance by BARDA Contract Officer that the accounting and related systems are EVMS-compliant

Timing : Q2, FY15

2.2 Non-Clinical Toxicology

Not applicable

2.3 Preclinical: *Unchanged from Original*

2.3.1 Porcine Studies: *Unchanged from Original*

2.3.1.1 ADRC Dose Package: *Unchanged from Original*

Objective: To determine the minimally effective dose of ADRCs in thermal burn injury

Rationale: In the Base Period Cytori has evaluated a narrow range of ADRC doses range limited at the upper end by the amount of adipose tissue easily obtainable from an individual mini-pig. The effectiveness of lower doses has not been assessed. The total dose of cells available for treatment is largely dependent on the volume of adipose tissue processed. Larger volumes require more collection and processing time and can increase risk. In order to appropriately balance risk and benefit it is important to determine the optimal cell dose so that the amount of tissue collected is adequate, but not excessive, for the size of the injury. This will be assessed by both local delivery into the wound and by intravenous injection. Efficacy will also be evaluated in irradiated animals at a dose determined from the dose reduction study.

2.3.1.1.1 ADRC Dose: Additional Evaluation of Previously Collected Biopsies: *Unchanged from Original*

Objective: To evaluate value of additional evaluations

Rationale: Studies in WBS 1.3.1 executed within the Base Period collected biopsies that were subjected to a number of histologic and immunohistologic stains (for example; Masson's trichrome and immunostaining for Ki67 and CD31). Data from these stains was informative. As is often the case in research, the information obtained raised new questions that can be addressed by application of additional histologic approaches. However, there was insufficient time and insufficient funds to apply these approaches during the Base Period. These approaches have the capacity to be informative in the studies to be executed under Option 1. The activities to be executed under this WBS element will develop and validate selected additional markers on biopsies collected during the Base Period in anticipation of applying said stains in ADRC dose studies to be conducted under WBS 2.3.1.1 (Dose Package) and other activities in WBS 2.3.1.

Approach: Biopsies and sections have already been prepared and several core analyses have been performed. Additional digital imaging and analysis including immunohistochemical and molecular assessment of parameters associated with both normal healing and with scarring, particularly hypertrophic scarring, will be performed.

Description:

For each group multiple wound healing parameters will be assessed. Candidate stains include: Movat's stain (a pentachrome stain that is recommended by UTMB Galveston for analysis of hypertrophic scarring), alpha smooth muscle actin (for contraction-inducing myofibroblasts), decorin (reduced in hypertrophic scarring), and type III collagen. Similarly, commercially available molecular arrays targeted for wound healing may be used to interrogate existing biopsy samples. All stained slides will be digitally scanned prior analysis. Using software such as the ImageScope software, each slide can be annotated to identify superficial and mid/deep regions within the wound tissue. The percent of positive staining can be quantified using the Deconvolution analysis algorithm (Aperio). This software algorithm makes use of a deconvolution method to separate the red and blue stain of the Masson's Trichrome. Epithelial thickness can be determined by histomorphometric analysis on digital slides using the Image Scope software. 3-6 measurements throughout the wound site (at edges and the center) can be performed to determine the thickness of the stratified and cornified layer of the neo-epidermis.

Deliverable : Interim and Final Study Reports

Success Criteria: Acceptance of reports by BARDA Program

Timing : Q2, FY15

2.3.1.1.2 ADRC Dose: Topical Delivery: *Unchanged from Original*

Objective: To determine the efficacy of topical delivery of ADRCs in thermal burn injury

Rationale: In the Base Period Cytori has demonstrated that delivery of ADRCs by direct injection into the base of the wound leads to increased epithelialization. Cytori's Burn Science Advisory Board has recommended that we evaluate mechanisms that might be easier and potentially faster to perform, in particular, topical delivery such as a spray, drip, or paint approach. A brief series of *in vitro* and *in vivo* studies similar to those executed in the base Period for other delivery routes is indicated in order to evaluate this approach.

Approach: These studies will use an approach selected during in vitro testing to apply viable ADRCs to burn wound following escharectomy.

Description:

Animals will receive thermal burn injury induced according to parameters optimized during the Base Period. Autologous ADRCs will be delivered on the same day as escharectomy. Different groups of animals will receive topical delivery of ADRCs with contralateral wounds used as matched control (treated with vehicle only). Healing will be evaluated by planimetry and histology at appropriate time points selected on the basis of results obtained in the Base Period. Each group will comprise a sufficient number of animals (for example, 4 or 6).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q2, FY15

2.3.1.1.3 ADRC Dose: Dose Finding: *Unchanged from Original*

Objective: To determine the minimally effective dose of ADRCs in thermal burn injury

Rationale: In the Base Period Cytori has evaluated a narrow range of ADRC doses range limited at the upper end by the amount of adipose tissue easily obtainable from an individual mini-pig. In order to maximize the likelihood of seeing a difference between treated and control wounds the first arm will apply dosing in wounds that are not treated with a split thickness skin graft (STSG) where data obtained in the Base Period demonstrate a robust signal to noise ratio for ADRC-induced increased epithelial migration. Once a dose has been determined in this model it will be applied in follow-up studies that include STSG (WBS 2.3.1.1.4 below).

Approach: These studies will use the approach applied in the Base Period to assess effectiveness of ADRCs when delivered at different doses by either local (that is, injection or topical as assessed by WBS 2.3.1.1.2) or intravenous delivery. For the local injection arm of the study, each animal may act as its own control using a paired wound model in which wounds on one side of the animal will receive vehicle alone (control) while the matching wounds on the other side receive ADRC treatment. Given the clinical relevance of hypertrophic scarring and the relative resistance of Gottingen minipigs and Yorkshire farm swine to this phenomenon these studies may be extended to include the Red Duroc strain of pigs (in place of or in addition to other strains) which is known to have a native susceptibility to hypertrophic scarring that is more similar to that of humans.

Description:

Animals will receive thermal burn injury induced according to parameters optimized during the Base Period. Autologous ADRCs will be delivered on the same day as escharectomy. Different groups of animals will receive local injection of ADRCs and intravenous injection of ADRCs. A suitable number (for example, four) of different ADRC doses will be evaluated. Doses selected will cover a wide range (for example, 250,000 ADRCs/cm ^{2} ; 125,000 ADRCs /cm ^{2} ; 50,000 ADRCs /cm ^{2} ; and Control = no ADRCs). Healing will be evaluated by planimetry and histology at appropriate time points selected on the basis of results obtained in the Base Period. Each group will comprise a sufficient number of animals (for example, 4 or 6).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q4, FY15

2.3.1.1.4 ADRC Dose: Confirmation with STSG: ***Unchanged from Original***

Objective: To determine the minimally effective dose of ADRCs in thermal burn injury

Rationale: Having demonstrated a minimal efficacious ADRC dose in WBS 2.3.1.1.3, the defined dose will now be applied to determine if it is effective in the context of a STSG.

Approach: These studies will use the approach applied in the Base Period to assess effectiveness of ADRCs when delivered at different doses by either local or intravenous delivery. For the local injection arm of the study, each animal may act as its own control using a paired wound model in which wounds on one side of the animal will receive vehicle alone (control) while the matching wounds on the other side receive ADRC treatment. All wounds will receive a STSG.

Description:

Animals will receive thermal burn injury induced according to parameters optimized during the Base Period. Autologous ADRCs will be delivered on the same day as escharectomy. Different groups of animals will receive local injection of ADRCs and intravenous injection of ADRCs. An ADRC dose determined from WBS 2.3.1.1.3 will be evaluated. Healing will be evaluated by planimetry and histology at appropriate time points selected on the basis of results obtained in the Base Period. Each group will comprise a sufficient number of animals (for example, 4 or 6).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q2, FY16

2.3.1.1.5 ADRC Dose: Confirmation with Higher Radiation Dose: ***Unchanged from Original***

Objective: To determine if the efficacy of the maximal ADRC dose is retained at higher radiation exposure

Rationale: Having demonstrated, in the Base Period, the ability of ADRCs to promote wound re-epithelialization in animals exposed to 1.2Gy of radiation, it is appropriate to execute a pilot study to evaluate efficacy at a higher radiation dose.

Approach: These studies will use the approach applied in the Base Period to assess effectiveness of ADRCs when delivered by either local or intravenous delivery following total body irradiation of greater than 1.2Gy (for example, 1.6Gy). For the local injection arm of the study, each animal may act as its own control using a paired wound model in which wounds on one side of the animal will receive vehicle alone (control) while the matching wounds on the other side receive ADRC treatment.

Description

Animals will receive total body irradiation and thermal burn injury induced according to parameters optimized during the Base Period. Autologous ADRCs will be delivered on the same day as escharectomy. Healing will be evaluated by planimetry and histology at appropriate time points selected on the basis of results obtained in the Base Period. Blood counts will be assessed at regular intervals to evaluate the degree of marrow suppression induced. Other assessments such as evaluation of marrow cell viability and function may be applied. A larger number of animals will likely be required to account for increased likelihood of mortality from the higher radiation dose combined with thermal burn injury. Hence, each group will comprise a sufficient number of animals (for example, 8 or 10).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q4, FY15

2.3.1.2 Burn/Scar Progression: *Unchanged from Original*

Objective: To obtain preclinical data that will allow assessment of feasibility of use of the Celution System as a treatment for burn wound progression or scarring.

Rationale: Burn wound progression is the pathophysiologic process by which a partial thickness thermal burn evolves over the first few days after injury to become a full thickness injury requiring a skin graft. This process occurs through vascular damage leading to ischemia:reperfusion injury and to the inflammatory response [1] . The same mechanisms that are proposed to be behind the efficacy of ADRCs observed in the Base Period (angiogenesis, modulation of inflammation, etc.) have the potential to mitigate burn progression. Similarly, the healing process following thermal burn injury can lead to scarring that is both disfiguring and that limits function, for example, limits range of motion of a joint. Interventions that impact progression of scar development and maturation have the potential to significantly improve burn care.

[1] Shupp, J.W., et al., *A review of the local pathophysiologic bases of burn wound progression.* J Burn Care Res, 2010. **31** (6): p. 849-73

Approach

The overall approach selected is taken from that applied in the Base Period for full thickness injury in which a porcine model of vertical burn wound progression or scarring taken from the published literature [2,3] is adapted, optimized, and validated and then used to assess efficacy of autologous ADRC treatment.

2.3.1.2.1 Model Development: ***Unchanged from Original***

Objective: To develop an animal model that will allow assessment of the effects of treatment with autologous ADRCs to treat burn wound progression.

Rationale: While a suitable animal model has been described in the literature [2] , it has not previously been executed by this team. Pilot activities are needed to establish the basic model.

Approach: Porcine models widely used for evaluation of thermal burn injury and have also been used for evaluation of burn and scar progression. The approach to be applied is essentially identical to that used in the Base Period for creation of a full thickness burn wound with the exception that the progression model must create a wound that is only partial thickness at the time of application but which progresses to deep/full thickness over a period of 3-4 days after injury whereas a model of hypertrophic scarring will require longer follow-up after injury.

Description

Each experimental animal will be subjected to thermal burn injury using the device developed for this purpose during the Base Period. These activities demonstrated that application of the device at a temperature of 200°C and contact pressure of 0.4kg/cm ^{2} , for 60 seconds created a reproducible full thickness injury. A published Study [2] has shown that application of a similar device at a temperature of 80°C and contact pressure of 0.32kg/cm ^{2} for 20-30 seconds creates a partial thickness burn that progresses to full thickness. In these studies parameters of time, temperature, and contact pressure will be managed to determine the precise combination that generates a wound that reproducibly progresses from partial to full thickness over ~3-4 days after injury. The same approach may be used to generate a burn that develops to hypertrophic scarring in an appropriate pig strain.

Thermal burn wounds will be created in a suitable number of animals as described above and assessed by histology of biopsies performed at the time of injury and at suitable intervals (for example, 6 hours, 24 hours, 48 hours, 72 hours and 96 hours) after injury to assess burn depth and progression over the ~96 hour timeframe with the different burn induction parameters. For evaluation of scarring a similar approach will be applied using the Red Duroc strain that develops hypertrophic scarring that is similar to that of humans.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY15

2 Singer, A.J., et al., *Validation of a vertical progression porcine burn model.* J Burn Care Res, 2011. **32** (6): p. 638-46

3 Harunari, N., et al., *Histology of the thick scar on the female, red Duroc pig: Final similarities to human hypertrophic scar.* Burns, 2006. **32** (6): p669-677

2.3.1.2.2 Model Optimization: ***Unchanged from Original***

Objective: To optimize an animal model that will allow assessment of the effects of treatment with autologous ADRCs to treat burn wound/scar progression.

Rationale: Assesses reproducibility of the model established in WBS 2.3.1.2.1 above.

Approach: The parameters defined to provide the intended model in WBS 2.3.1.2.1 will be assessed for reproducibility.

Description:

A series of wounds will be induced in a cohort of animals (for example, six animals per arm) using the temperature, contact pressure, and contact time determined in Model Development above (WBS 2.3.1.2.1). Blunt debridement may be performed to remove lose necrotic tissue. Animals will also undergo lipectomy for ADRC isolation for treatment of wounds assigned for treatment. Wounds will receive treatment with ADRCs or with vehicle control. Progression will be assessed by histology of biopsies taken at suitable intervals (for example, 6 hours, 24 hours, 48 hours, 72 hours and 96 hours) after injury to assess burn depth and progression or later times (for example, two weeks, two months, six months) to assess scarring.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q3, FY15

2.3.1.2.3 Model Evaluation: ***Unchanged from Original***

Objective: To evaluate treatment effect of ADRCs in the optimized model.

Rationale: To evaluate ability of ADRC treatment to modulate burn wound/scarprogression

Approach: The model developed and optimized in the studies described above will be used to assess the ability of ADRCs to alter progression. ADRCs will be applied by different routes, for example, direct injection, spray onto the wound, and intravenous injection.

Description

A series of wounds will be induced in a series of animals using parameters defined in studies described above. Blunt debridement may be performed to remove lose necrotic tissue after injury. Animals will also undergo lipectomy for ADRC isolation for treatment of wounds assigned to a treatment arm.

Thermal burn wounds will be created as described above and assessed by histology of biopsies performed at the time of injury and at suitable intervals after injury to assess burn depth and progression of the burn or scarring in the presence and absence of ADRC treatment.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY16

2.3.1.3 Primary Proof of Concept: *Unchanged from Original*

Objective: To demonstrate proof of concept for use of autologous ADRCs in enhancing healing of thermal burn injury in irradiated animals

Rationale: One of the initial concerns with this project was that it was deemed possible that the ability of ADRCs to promote wound healing might be abrogated by exposure of the subject to total body irradiation prior to adipose tissue harvest. Studies performed in the Base Period demonstrated that this is not the case and that ADRCs obtained from irradiated animals retain the ability to promote wound re-epithelialization. The purpose of this study is to confirm this finding in a single pivotal study that combines the improvements made and lessons learned in prior studies related to matters such as cell dose, route of administration, improved harvest and application of skin grafting, assessment of healing, etc.

Approach: Conditions defined in the studies described above will be applied to evaluate healing when ADRCs are delivered following thermal burn injury.

Description

Animals will receive thermal burn injury induced according to parameters optimized in the studies described above. Wounds will be treated with either control or autologous ADRCs. ADRCs applied at the time of the initial treatment will be applied locally (for example directly into or onto the wound) and/or by systemic administration (for example, by intravenous injection). Each group will comprise a sufficient number of animals (for example, 4 or 5). Healing will be evaluated at time points selected on the basis of results obtained in the studies described above (for example, at the time of application of the STSG and two weeks after application of STSG). Assessment of fibrosis and hypertrophic scarring at the treatment site may be performed a suitable time after injury (for example, six months).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q4, FY16

2.3.2 Human Thermal Burn ADRC Characterization: Eschar: *Unchanged from Original*

Objective: To characterize the ADRC population obtained from patients with thermal burn injury

Rationale: As currently proposed, the pilot clinical trial includes use of adipose tissue obtained by excision of adipose tissue exposed during tangential or fascial excision of eschar. Studies performed in the Base Period have provided evidence that the yield, viability, function, and composition of ADRCs obtained from material obtained from fascial excision escharectomy are all within the range seen when processing adipose tissue obtained by liposuction from healthy donors. The current studies are needed to expand on this preliminary data by collecting and evaluating additional specimens and by extending the study to include tissue obtained by tangential excision. In addition, optimal enzymatic digestion of the adipose tissue requires that the excised tissue be morselized into fragments creating a surface area-to-volume ratio that allows efficient extraction of ADRCs.

Approach: Adipose tissue from patients with thermal burn injury will be obtained following informed consent and processed to prepare ADRCs. The number and function of these cells will be assessed using approaches such as cell viability and cell characterization methods that are used routinely by Cytori for evaluation of cells from conventional sources (liposuction) as applied in the Base Period. This will include development of a rapid, efficient, and validated method by which the excised tissue is morselized.

Description

Human adipose tissue will be obtained following informed consent from a sufficient number of patients (for example, 20) undergoing treatment for thermal burn injury. Research subjects will be drawn from burn programs located in geographic proximity to the Contractor's research facility (for example, at the University of California at San Diego Burns Center located approximately five miles from the Cytori laboratories) and the University of California at Irvine Burn Center (located approximately 80 miles from Cytori laboratories). The tissue will be processed to prepare morselized adipose tissue that will then be digested to prepare ADRCs. Cell yield and viability will be determined using a Nucleocounter™ device in accordance with standard practices at Cytori. Other examples of tools for characterization include multicolor flow cytometry to evaluate cell ADRC cellular composition, and molecular probes to evaluate the population as a whole.

Deliverable : Monthly Updates (during bi-weekly calls); Report for IDE Submission, and written Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Monthly updates for enrollment reporting; Q1, FY15 for IDE Submission; Monthly reports to Q4 FY16; Q4, FY16 for interim and final reports.

2.4 Clinical Tasks: ***Unchanged from Original***

2.4.1.1 Pilot Clinical Trial Preparation: ***Unchanged from Original***

Objective: To perform the groundwork necessary for FDA approval of a Pilot clinical trial of the use of the Celution System in thermal burn injury and for expedited start of enrollment in the trial following FDA approval.

Rationale: The Celution System is regulated as a device within the Center for Biologics Evaluation and Research (CBER). CBER has approved the use of the Celution System in three prior IDE clinical trials. In the course of discussions with the FDA regarding these studies the Agency communicated to Cytori that they strongly preferred the study design to include evaluation of cell dose. The proposed study will obtain the safety and feasibility of a pilot study with additional information of cell dose and assessment of secondary outcomes associated with efficacy. These data may allow determination of sample size in any Pivotal Trial to follow (as described in Option 2). Prior to filing the IDE package for this Pilot Trial, the clinical team must develop a detailed clinical protocol and Investigator's Brochure (IB). These and related activities associated with assessment and selection of potential clinical trial sites and CROs will be executed under WBS 2.4.1.4.

Additional tasks must be performed in order to minimize the delay between FDA approval and start of the trial itself. These include selection of a qualified Clinical research Organization and of clinical sites that have the capability to enroll patients and execute the study with the level of quality required to achieve study goals.

Approach: With the assistance of a Scientific Advisory Board, the team will develop the protocol and IB as for past Cytori IDE filings. The team will also execute clinical site evaluation, CRO evaluation, and an preliminary assessment of contractual matters to ensure that the budget for proposed Option 2 is accurate.

Purpose

To provide the Regulatory team with the documentation needed to obtain FDA approval to initiate the specified clinical trial.

Description

Activities to be conducted include: development of the clinical trial protocol; assessment and selection of Clinical Contract Research Organization (CRO); and assessment, selection, and qualification of clinical trial sites. These activities will be executed with input from Cytori's Thermal Burn Scientific Advisory Board.

Deliverables : Monthly Updates (during bi-weekly calls)
Clinical Trial Protocol and Investigator's Brochure for IDE Submission Q1 FY15
Site Initiation Readiness Report Q3 FY15

Success Criteria: FDA approval of trial

Timing : Clinical Trial Protocol and Investigator's Brochure for IDE Submission Q1 FY15
Site Initiation Readiness Report Q3 FY15

2.5 Regulatory Tasks: ***Unchanged from Original***

2.5.1 Pilot Clinical Trial IDE Approval: ***Unchanged from Original***

Purpose

The FDA must grant approval before clinical use of an Investigational Device can be initiated. In the case of the Celution System in Thermal Burn Injury this will require approval under the Investigational Device Exemption mechanism.

Description

Cytori's regulatory team will prepare and submit a package of documents. Contents will be based upon the clinical trial protocol, data obtained in studies described above, and feedback received from the Agency in a Pre-IDE Meeting.

The content of the IDE package will largely mirror that used in prior submissions of this kind to the Agency. Contents will include relevant study reports from activities executed during the Base Period and Option 1. In the event that the FDA has additional questions to be answered following review of the initial package, the Regulatory team will develop, collate, and submit responses to said questions.

Deliverable : IDE Package and Responses (as required) to FDA Questions

Success Criteria: IDE Approval Granted by FDA

Timing : Q3, FY15

2.6 CMC

2.6.1 ADRC Delivery System: ***Unchanged from Original***

Objective: To develop a system capable of preparing adipose tissue obtained by excision rather than by liposuction for processing within the CT-X2 System and subsequent rapid, reproducible delivery to a thermal burn injury.

2.6.1.1 Tissue Pre-Processing: ***Unchanged from Original***

Objective: To develop a system capable of preparing adipose tissue obtained by excision rather than by liposuction for processing.

Rationale: Cytori methods have been optimized for preparing ADRCs from tissue collected by liposuction. During this process the suction force combined with the geometry of the liposuction cannula cuts the adipose tissue into small fragments. The conditions for

enzymatic digestion of this material are based upon the standard surface area to volume ratio of tissue prepared by liposuction. Tissue prepared by excision will have a different surface area to volume ratio and, hence, will not be processed optimally without pre-processing. Activities within WBS 2.6.1.1 are designed to develop a standard, reproducible, and clinically acceptable pre - processing method that will prepare excisional samples for optimal processing. Cytori has developed approaches for pre-processing the tissue that are acceptable for the laboratory, but not for the clinic. The activities to be performed in WBS 2.6.1.1 are intended to address this deficiency.

Approach: Human adipose tissue will be pre-processed by two methods; (1) Cytori's standard laboratory approach and (2) using tools and supplies commonly available in the operating room. Tissue will then be processed. The yield, viability, and composition of the ADRCs derived will be evaluated using methods described above (WBS 2.3.2).

Description: Human adipose tissue (see WBS 2.3.2) will be obtained following escharectomy. Adipose tissue will be excised from the sample and then sliced into fragments that approximate the size of fragments obtained by liposuction. Tissue slicing will be performed by two methods; (1) Cytori's standard laboratory approach and (2) using tools and supplies commonly available in the operating room. Tissue will then be processed. The yield, viability, and composition of the ADRCs derived will be evaluated using methods described above (WBS 2.3.2). Once the optimal approach using Operating Room materials has been developed, the approach will then be validated.

Deliverable : Validated Standard Operating Procedure with Validation Data

Success Criteria: Protocol accepted by FDA in IDE Submission

Timing : Q3, FY15

2.6.1.2 Cell Delivery Mechanism: ***Unchanged from Original***

Objective: To develop a system capable of reproducibly and conveniently delivery ADRCs to a thermal wound following escharectomy.

Rationale: The current clinical protocol, based on preclinical data, specifies delivery ADRCs into the wound bed a single injection indicated for each $10cm^2$ of treatment area. There is currently no off-the-shelf approach available that achieves this delivery without unnecessarily prolonging surgical time.

Approach: Injection of ADRCs into the wound could, for example, take the form of a powered dosing syringe delivering a specified volume of material (ADRCs) into the wound bed at each touch of the button. This markedly reduces strain in the Surgeon's hand for large wounds requiring many injections. Examples of this approach were presented to the FDA at the Pre-Submission meeting where they met with general approval with the natural proviso that full review in the IDE Submission would be required. For example, FDA indicated that they would require data showing that the output of the injection system was consistent over time. Another possible approach is a topical spray similar to that already used in burn care for application of fibrin glue used to help secure skin grafts. The activities performed herein will continue development of a suitable approach in order to complete the information needed for the IDE submission. Additional technical support will be required in the early phase of the clinical trial for matters such as set-up and training.

Description: Cytori engineers have already identified candidate powered syringe and spray systems that may be suitable for this purpose. These devices will be brought in-house. The convenience, time, and reproducibility of injection may be assessed by, for example, injecting ADRCs into surrogate materials, for example, porcine skin, human skin obtained from patients undergoing elective cosmetic procedures (eg: "tummy tuck") and/or into sample collection vials.

Deliverable : Interim and Final Reports

Success Criteria: Protocol accepted by FDA in IDE Submission

Timing : Q3, FY15

2.6.1.3 ADRC Delivery System and Process: ***Supplement Only***

Objective: To obtain data and reports that will allow FDA to assess the safety and suitability of the ADRC Delivery System and Process for use in the proposed clinical trial.

Rationale: Robust testing, verification, and validation of the system and process used for ADRC preparation and delivery is a necessary component of the package to be submitted for FDA review as part of obtaining approval to execute the proposed clinical trial.

Approach: FDA requirements and guidance documents specify a range of testing that must be performed on systems such as that proposed herein before said systems can be used in a clinical trial. Small companies like Cytori invariably find it more efficient to outsource much of this specialized testing to vendors with specific expertise. For this reason, certain aspects of the work proposed for WBS 2.6.1.3 will be executed by subcontractors.

Description

CMC testing on hardware, consumable, and software elements of the Cell Delivery System and Process.

Deliverable :

1. Consumable component mold verification report
2. CMC Test Report of Cell Delivery System and Process circuit board element
3. Electromagnetic compatibility testing report
4. Consumables for use in testing to be executed by Cytori in WBS 2.3.1, WBS 2.3.2, WBS 2.4.1, WBS 2.5.1, and WBS 2.6.1
5. Software Verification and Validation report

Success Criteria: Reports accepted by FDA in IDE Submission

Timing : Q3 2015

Option 2: Pilot Clinical Trial Execution: ***Unchanged from Original***

Specific Objectives and Scope

As proposed herein, the Contractor intends to design, execute, and complete a pilot clinical trial of the countermeasure in thermal burn injury wherein said trial will inform and support development of a pivotal clinical trial to be funded by a future CLIN/contract option. The Contractor further intends to perform clinical, regulatory, and development tasks in preparation for said pivotal trial.

2.1 None
2.2 None
2.3 None

2.4.1.2 Pilot Clinical Trial Execution

Objective: To obtain preliminary clinical safety, feasibility, and efficacy data on the use of the Celution System in thermal burn injury

Rationale: The Celution System is regulated as a device within the Center for Biologics Evaluation and Research (CBER). CBER has approved the use of the Celution System in three IDE clinical trials. In the course of discussions with the FDA regarding these studies the Agency communicated to Cytori that they strongly preferred the study design to include evaluation of cell dose. The proposed study will obtain the safety and feasibility of a pilot study with additional information of cell dose and assessment of secondary outcomes associated with efficacy. These data will allow determination of sample size in any Pivotal Trial to follow (as described in Option 2). WBS 2.4.1.3 includes all activities needed to execute the Pilot Clinical trial.

Approach: A randomized, prospective safety and feasibility study in which one or more areas in a patient will receive the experimental treatment.

Purpose

This study has two purposes: (1) To obtain safety and feasibility data and; (2) To obtain preliminary outcome data to facilitate calculation of appropriate sample size in the subsequent pivotal clinical trial.

Description

Cytori clinical team will design, execute, and complete a Pilot clinical trial of the use of the Celution System in thermal burn injury. While the precise nature of the study will, naturally, depend on the results of data obtained in earlier studies, a general outline of the study design is shown below (with examples of study endpoints).

Objectives	• **First-in-man study** • **Demonstrate safety and feasibility** • **Provide data set to power Pivotal Trial**
Test Article	Adipose-derived regenerative cells (ADRCs) as isolated by the Celution System
ADRC Delivery Method(s)	o ADRCs applied at the time of autologous split thickness skin graft (STSG) placement
Patient Population	• Adult and pediatric patients • Full-thickness or deep partial-thickness burns involving ≥30% total body surface area(TBSA) • Will undergo surgical escharectomy and skin grafting as part of burn treatment • Availability of a sufficient amount of subcutaneous adipose tissue obtainable from or beneath excised eschar tissue • Able to provide written informed consent/assent in accordance with Institutional Review Board (IRB) approval
Design	• Prospective, randomized study of patients with thermal burn injury to include assessment of dose effect
Sample Size	30-60 patients
Clinical Centers	6 sites
Key Endpoints	• Safety Endpoints o Adverse Events (AEs), Serious Adverse (SAEs), and Adverse Device Effects (ADEs) listed and tabulated o Study wound infections (e.g., superficial burn wound infection, invasive burn wound infection) o Graft take o Complications associated with adipose-tissue harvest (e.g., bleeding, infection) o In-hospital mortality rates (during index hospitalization) o Overall mortality rate • Feasibility / Efficacy Endpoints (formal primary and secondary efficacy endpoints will be pre-specified when designing the Pivotal Trial). Examples of endpoints that could be included are: o Rate of epithelialization of a meshed graft o Rate of improvement on transepithelial water loss o Post-healing skin function (e.g., scaliness, dryness, itching, perspiration, pigmentation, elasticity, etc.) o Joint function (for applicable sites) o Investigator's assessment of usability / ease-of-use o Investigator's assessment of functional and cosmetic results o Patient's assessment of functional and cosmetic results • Additional Assessments o ADRC characterization studies; only in instances where there are available in excess after treatment [e.g., flow cytometry, CFU-F (colony forming unit–fibroblast) assay, etc.] o Levels of circulating pro-inflammatory cytokines o Collection of health economic data (e.g., hospital length-of-stay, ICU length-of-stay, resource utilization, quality-of-life measures, etc.)
Duration of Follow-up	6 months (with 12 month registry follow-on if required by FDA)
Estimated Trial Duration	1.25 years

Deliverable : Interim and Final Reports

Success Criteria: As defined in protocol

Timing : Q4, FY16

2.4.1.3 Preparation for Pivotal Clinical Trial

Purpose

In order to for the FDA to provide specific guidance with regard to additional preclinical and development data required to initiate a clinical trial, the Agency will require the outline or a draft version of the protocol for the pilot clinical trial.

Description

In collaboration with our Thermal Burn Scientific Advisory Board and on the basis of preliminary preclinical data, the Cytori clinical team will develop a clinical trial study outline suitable for submission to the Agency as part of a Pre-Submission (pre-IDE) package.

Deliverable : Protocol Outline

Success Criteria: Acceptable to BARDA CO/PO

Timing : Q4, FY16

2.5.2 Pivotal Clinical Trial Pre-Submission Meeting

Purpose

The FDA must grant approval before clinical use of an Investigational Device can be initiated. In the case of the Celution System in Thermal Burn Injury this will require approval under the Investigational Device Exemption mechanism.

Description

Cytori's regulatory team will prepare and submit a package of documents. Contents will be based upon the clinical trial protocol outline and data obtained in studies described above.

The content of the pre-IDE package will largely mirror that used in prior filings of this kind by the Contractor.

Deliverable : Meeting Report

Success Criteria: Obtain clarity from the Agency on requirements for initiation of a clinical trial

Timing : Q4, FY16

Option 3: Pivotal Clinical Trial: ***Unchanged from Original***

Start Date: Q3, FY15

Option 3 will be triggered if the Interim or Final Study Report from the Pilot Clinical Trial meets success criteria specified in protocol

3.1 Technical and Project Management

3.1.1 Complete new hiring needed for execution of clinical contract activities

Execute hiring of new clinical staff needed for execution of Option 2 activities

Deliverable : Report showing that key positions have been filled and added to contract

Success Criteria: Positions identified during negotiations have been filled by qualified persons

Timing : Q4, FY15

3.2 Non-Clinical Toxicology

Not applicable

3.3 Preclinical Tasks

No activities proposed

3.4 Clinical Tasks

3.4.1 Pivotal Clinical Study

Purpose

This study is intended to obtain clinical data that will lead to FDA licensure of the Celution System for use in the treatment of thermal burn injury.

Description

In collaboration with our Thermal Burn Consultants (for example, Drs. David Herndon, Carl Schulman, and Meyer Tenenhaus) the Cytori clinical team will design, execute, and complete a pivotal clinical trial of the use of the Celution System in thermal burn injury. While the precise nature of the study will, naturally, depend on the results of data obtained in earlier studies, a general outline of the study design is shown below (with examples of study endpoints).

Objectives	• **Confirm safety** • **Demonstrate efficacy** • **Support PMA submission**
Prerequisites	• Investigational Device Exemption (IDE) approval from FDA • Successful completion of Pilot Trial
Test Article	Adipose-derived regenerative cells (ADRCs) as isolated by the Celution System
ADRC Delivery Method(s)	• May include the following alone or in combination (TBD, based on pre-clinical results): o ADRCs loaded onto a skin-substitute/dressing (e.g., Integra® Dermal Regeneration Template, or similar) prior to application on the post-escharectomy wound bed o ADRCs applied at the time of autologous split thickness skin graft (STSG) placement

Patient Population	• Similar to Pilot Trial, adjusted (if necessary) based on results of sub-group analyses of Pilot Trial data
Design	• Prospective, randomized, matched- pair comparison: o Two patient groups randomized to receive surgical treatment (escharectomy, skin-substitute/scaffold coverage, and autologous STSG) either with or without adjunctive use of ADRCs o
Sample Size	~ 300-400 patients (sample size estimate will be based on formal power calculations using Pilot Trial data)
Clinical Centers	~ 15-25 sites
Key Endpoints	• Safety Endpoints o Adverse Events (AEs), Serious Adverse (SAEs), and Adverse Device Effects(ADEs) listed and tabulated o Study wound infections (e.g., superficial burn wound infection, invasive burn wound infection) o Complications associated with adipose-tissue harvest (e.g., bleeding, infection) o In-hospital mortality rates (during index hospitalization) o Overall mortality rate • Feasibility / Efficacy Endpoints (formal primary and secondary efficacy endpoints will be pre-specified when designing the Pivotal Trial) o Percent "take" of dermal substitute o Percent "take" of autologous STSG o Percent of wound healing by contraction or degree of contraction (percentage of original wound size) o Time to wound closure o Post-healing skin function (e.g., scaliness, dryness, itching, perspiration, pigmentation, elasticity, etc.) o Joint function (for applicable sites) o Investigator's assessment of usability / ease-of-use o Investigator's assessment of functional and cosmetic results o Patient's assessment of functional and cosmetic results • Additional Assessments o ADRC characterization studies; only in instances where there are available in excess after treatment [e.g., flow cytometry, CFU-F (colony forming unit–fibroblast) assay, etc.] o Levels of circulating pro-inflammatory cytokines o Collection of health economic data (e.g., hospital length-of-stay, ICU length-of-stay, resource utilization, quality-of-life measures, etc.)
Duration of Follow-up	6 and 12 months (with registry follow on if required by FDA)
Estimated Trial Duration	2 years

Deliverable : Interim and Final Reports

Success Criteria: As defined in protocol

Timing : Q3, FY17

3.5 Regulatory Tasks

3.5.1 Pivotal Clinical Trial IDE Approval

Purpose

Before clinical use of an Investigational Device can be initiated, the FDA must grant approval. In the case of the Celution System in Thermal Burn Injury this will require approval under the Investigational Device Exemption mechanism.

Description

Cytori's regulatory team will prepare and submit a package of documents. Contents will be based upon the clinical trial protocol, data obtained in studies described above, and feedback received from the Agency in the Pre-IDE Meeting.

The content of the package will largely mirror that used in the package for the Pilot Trial. Contents will include relevant study reports and the clinical trial protocol.

Deliverable : IDE Package

Success Criteria: IDE Approval Granted by FDA

Timing : Q1, FY16

3.5.2 PMA Submission

Purpose

In order to obtain FDA licensure of the Celution System with indications for use in thermal burn, Cytori will need to submit to the Agency a package of data needed for Agency review.

Description

The Cytori Regulatory team, in collaboration with other Cytori functional areas, will collate study reports and other documents in accordance with FDA requirements.

Deliverable : FDA PMA Application

Success Criteria: FDA Licensure

Timing : Q4, FY17

3.6 CMC

No activities proposed for this option

Option 4: Optimization of Combined Injury Treatment:

Unchanged from Original

The primary goal of this project is to evaluate and develop the Celution System as a medical countermeasure for use in patients with combined injury associated with radiation exposure and full thickness thermal burns.

Achievement of this goal requires two elements:

1 . Development of a treatment that is suitable for deployment in the context of a mass casualty event; and

2 . Obtaining FDA approval of the Celution System as a treatment for thermal burn injury

Options 1, 2, and 3 above are directed at the second element. However, these activities will necessarily be directed at use under standard conditions rather than those in effect following a mass casualty event. For that reason, additional activities are needed to build on data obtained in the Base Period to develop a treatment that is suited for use following a mass casualty event. These activities will be executed in Option 4.

Option 4 will be triggered if all three of the following parameters are met:

Parameter 1: Autologous ADRCs harvested and delivered following combined injury involving radiation exposure and thermal burn improve healing in a relevant preclinical model (for example, irradiated Gottingen mini-pigs that have received full thickness thermal burn injury). Improvement in healing will be defined in the research protocol detailing the studies.

Parameter 2: Demonstrate that the cellular output obtained when processing porcine and human adipose tissue within the CT-X2 prototype system is comparable or superior to that obtained when tissue processed within the current version of the Celution 800 System. Comparability is measured in terms such as the yield of viable cells per unit volume of tissue processed, the reagent residual level, and the presence of major cell types.

Parameter 3: Demonstrate that a satisfactory cell population can be obtained from the adipose tissue of patients with substantial thermal burn injury.

Start Date: Q2, FY14

Objective: To develop a treatment for combined injury involving radiation exposure and thermal burn wherein said treatment is suitable for deployment following a mass casualty event.

Rationale: Conventional treatment for thermal burn injury is unsuited for use following a mass casualty event due to the need for delivery by a specialist burn surgeon. The combination of an easy-to-use dressing and autologous ADRCs processed within the Celution System has the potential to address this by providing an effective therapy that can be applied by persons with a less specialized skill.

Approach: Preclinical studies (*in vitro* and *in vivo*) directed at evaluating dressings with the required handling and cell compatibility characteristics and the means by which use of these dressings with ADRCs can be optimized. *In vivo* studies will apply the combined injury model described in the Base Period. Activities include CMC and Regulatory tasks needed for clearance of the dressing through the 510k mechanism.

Purpose

This project is based on the understanding that existing treatments for thermal burn injury are difficult to apply outside of a specialist burn center and that, consequently, such treatments will be of limited value in the aftermath of a mass casualty event involving thermal burn injury and radiation exposure. Further, simple, easy-to-use dressings that can be applied outside of a specialist burn center lack the efficacy of more complex, yet harder to apply, treatment. Cytori has proposed that adding ADRCs to a simple dressing will create a treatment that possesses the ease-of-use characteristics needed for application outside of a specialist burn center with the efficacy of more complex treatments. Studies to be executed within the Base Period will demonstrate proof-of-concept for the efficacy of autologous cells in this setting. The purpose of the studies to be executed under Option 3 is to develop this observation into a treatment.

4.1 Technical and Project Management

4.1.1 Complete new hiring needed for execution of clinical contract activities

Execute hiring of new clinical staff needed for execution of Option 3 activities

Deliverable : Report showing that key positions have been filled and added to contract

Success Criteria: Positions identified during negotiations have been filled by qualified persons

Timing : Q4, FY16

4.1.2 Complete new hiring needed for execution of research and development contract activities

Execute hiring of new R&D staff needed for execution of Option 3 activities

Deliverable : Report showing that key positions have been filled and added to contract

Success Criteria: Positions identified during negotiations have been filled by qualified persons

Timing : Q3, FY14

4.2 Non-Clinical Toxicology

Not applicable

4.3 Preclinical Tasks

4.3.1 Optimization of Combined Injury: Porcine Studies

Purpose

The purpose of these studies is to perform the *in vivo* testing needed to develop an easy-to-use, ADRC-based treatment for thermal burn injury in the context of radiation exposure.

Description

These studies will use the porcine model of combined injury described above and validated during the Base Period to evaluate the effects of variables such as cell dose and compatibility with easy-to-use dressing candidates. The precise variables to be evaluated will be determined by the results of studies executed during the Base Period and will be specified in the protocol agreed to at the onset of this Option by the Contractor and BARDA.

4.3.2 Supplemental Proof of Concept Study

Objective: To demonstrate proof of concept for use of autologous ADRCs in enhancing healing of thermal burn injury in irradiated animals

Rationale: To confirm and extend the results of

Approach: Conditions defined in the studies described in WBS 1.3 for the Base Period will be applied to evaluate healing when ADRCs are delivered in conjunction with a dressing or at the time of split thickness skin graft application.

Description

Animals receiving combined radiation and thermal burn injury induced according to parameters optimized in the studies described above will receive austere care comprising delayed escharectomy (for example, at three days after injury) and application of a meshed autologous STSG at a suitable period after initial treatment. Autologous ADRCs will be delivered either with the initial treatment or at the time of application of the STSG. Animals will be treated with two different dressings selected on the basis of the studies described above. ADRCs applied at the time of the initial treatment will be applied either in combination with the dressing, by systemic administration (for example, by intravenous injection), or by both routes. Each arm of the study will comprise a sufficient number of animals (for example, 4 or 5). A control group of animals will receive a vehicle only control (no ADRCs).Healing will be evaluated at time points selected on the basis of results obtained in the studies described above (for example, at the time of application of the STSG and two weeks after application of STSG). An additional time point will be added for assessment of fibrosis and hypertrophic scarring at the treatment site to be performed a suitable time after injury (for example, six months).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Healing Endpoint Reports: Q1, FY15
Fibrosis Endpoint Reports: Q2, FY15

4.3.3 Ease of Use and Cell Compatibility: Porcine Studies

4.3.3.1 Ease of Use

Objective: To evaluate ease of use of candidate dressings

Rationale: The primary obstacle to use of many current therapies following a mass casualty event is that their handling characteristics and related properties mean that they can be applied only by experienced burn surgeons.

Approach: Candidates will be applied to full thickness thermal burn injuries. Users will rate handling at the time of application and assess retention of the dressing on the wound over time.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury as described under the Base Period will receive escharectomy followed by application of the candidate dressings. Candidates will be selected on the basis of the results of studies in the Base Period. Users will rate parameters such as ease of handling and time required for application. Assessment of other parameters such as retention of the dressing will be performed at the time of dressing change and at suitable intervals over a period of up to six weeks after application.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY15

4.3.3.2 Cell Compatibility (Porcine)

Objective: To determine the compatibility of candidate dressings with porcine ADRCs

Rationale: The product is an easy-to-use dressing that has its limited capacity to promote healing supplemented by co-delivery with ADRCs. Thus, the dressing must be compatible with the cells in addition to being easy to apply. This is distinct from similar studies in which the goal was to identify dressings that best show the ability of ADRCs to promote healing.

Approach: The approach to be used will mirror the *in vitro* studies used in WBS 1.3.1.2.1.2 of the Base Period.

Description

Studies will evaluate the compatibility of dressings with porcine ADRCs by evaluating cell viability and the uniformity of loading (number of viable cells per unit volume of dressing) at the time of loading and again at specified times after loading. This will include evaluation of simple means by which the cells can be loaded onto the dressing. Histologic evaluation will be applied at different times after seeding to evaluate cell viability and penetration into the material. Variables to be examined include: cell concentration, cell dose applied per unit surface area (or volume), and loading time.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY15

4.3.4 *In Vivo* Optimization

4.3.4.1 Efficacy Evaluation

Objective: To evaluate healing of full thickness thermal burns in irradiated animals following treatment with an easy-to-use dressing and autologous ADRCs

Rationale: The product to be developed from this project must not only exhibit ease of use and compatibility with ADRCs, it must also promote healing of full thickness thermal burn injury in an irradiated animal.

Approach: The approach will mirror that used in the Base Period studies.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury applied as described under the Base Period will receive escharectomy. Animals will be divided into groups for control and treatment arms. For example, one group will receive no treatment; one will receive treatment with the selected dressing supplemented with ADRCs; and the third group will be treated with the dressing without ADRCs. Animals randomized to receive no ADRCs will be divided into two groups at the time of STSG. One of these groups will receive ADRCs along with the STSG, the other will receive STSG only. Healing will be assessed at appropriate time points before and after application of STSG (for example, two weeks after escharectomy, immediately prior to STSG and two weeks following STSG).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q3, FY15

4.3.4.2 Optimization of Cell Dose

Objective: To evaluate the effects of ADRC dose on healing of full thickness thermal burns in irradiated animals following treatment with an easy-to-use dressing and autologous ADRCs

Rationale: In order to minimize morbidity while maximizing efficacy it will be important to assess the effects of different cell doses on healing of full thickness thermal burn injuries in irradiated animals.

Approach: The approach will mirror that used in 1.3.1.5.3.1 except that the dose of cells delivered will be varied across a suitable range.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury applied as described under the Base Period will receive escharectomy. Animals will be divided into groups for control and treatment arms. For example, one group will receive treatment with the selected dressing supplemented with a suitable number of ADRCs; a second group will be treated with a substantially large dose of ADRCs; a third group will receive a substantially lower dose of ADRCs; and a control group will be treated without ADRCs. Healing will be assessed at appropriate time points before and after application of STSG (for example, two weeks after escharectomy, immediately prior to STSG and two weeks following STSG).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY16

4.3.4.3 Alternate Donor ADRCs

Objective: To evaluate the effects of allogeneic ADRCs on healing of full thickness thermal burns in irradiated animals following treatment with an easy-to-use dressing and autologous ADRCs

Rationale: Studies have shown limited immunogenicity of allogeneic ADRCs [26] . While there are potential disadvantages to this approach, there are also advantages in terms of both ConOps and the absence of effect of irradiation on the donor cells.

Approach: The approach will mirror that used in 1.3.1.5.3.1 except that the donor cells will be obtained from non-irradiated donor animals.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury applied as described under the Base Period will receive escharectomy. Animals will be divided into groups for control and treatment arms. For example, one group will receive treatment with the selected dressing supplemented with a suitable number of ADRCs; a second group will be treated with the same dose of ADRCs obtained from a donor animals that has not been irradiated; and a control group will be treated without ADRCs. Healing will be assessed at appropriate time points before and after application of STSG (for example, two weeks after escharectomy, immediately prior to STSG and two weeks following STSG).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q1, FY16

4.3. 4.4 Efficacy Evaluation: Timing

Objective: To evaluate the effect of timing of ADRC administration on healing of full thickness thermal burns in irradiated animals following treatment with an easy-to-use dressing and autologous ADRCs

Rationale: The product to be developed from this project must not only exhibit ease of use and compatibility with ADRCs, it must also promote healing of full thickness thermal burn injury in an irradiated animal. Timing of cell delivery may well impact healing parameters.

Approach: The approach will mirror that used in the Base Period studies.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury applied as described under the Base Period will receive escharectomy. Animals will be divided into groups for control and treatment arms. For example, one group will receive no treatment; one will receive treatment with the selected dressing supplemented with ADRCs; and the third group will be treated with the dressing without ADRCs. Animals randomized to receive ADRCs will be divided into groups according to the time at which the ADRCs are delivered.

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q4, FY16

4.3.4.5 Efficacy Evaluation: Route

Objective: To evaluate the effect of route of delivery of ADRC administration on healing of full thickness thermal burns in irradiated animals following treatment with an easy-to-use dressing and autologous ADRCs

Rationale: The product to be developed from this project must not only exhibit ease of use and compatibility with ADRCs, it must also promote healing of full thickness thermal burn injury in an irradiated animal. Route of cell delivery (systemic versus local) may well impact healing parameters.

Approach: The approach will mirror that used in the Base Period studies.

Description

A sufficient number of animals with radiation exposure and full thickness thermal burn injury applied as described under the Base Period will receive escharectomy. Animals will be divided into groups for control and treatment arms. For example, one group will receive no treatment; one will receive treatment with ADRCs; and the third group will be treated with the dressing without ADRCs. Animals randomized to receive ADRCs will be divided into groups according to the route by which the ADRCs are delivered (intravenous, local delivery, or both).

Deliverable : Interim and Final Study Reports

Success Criteria: Achieves success parameter defined in study protocol agreed to by BARDA and the Contractor prior to initiation of studies

Timing : Q2, FY17

4.3.4.6 Optimization of Combined Injury: Studies with Human Tissue and Cells

Purpose

The purpose of these studies is to perform the *in vitro* testing with human cells associated with development of an easy-to-use, ADRC-based treatment for thermal burn injury in the context of radiation exposure.

Description

The proof-of-concept studies to be executed during the Base Period will examine variability of cell yield from human eschar material. Should these studies demonstrate feasibility of eschar tissue as a source of cells, it will be necessary to execute studies addressing parameters such as optimization of the process for obtaining ADRCs from eschar material and loading them onto the easy-to-use dressing. Studies will be performed on a sufficient number of specimens of human tissue obtained following informed consent from patients with thermal burn injury at local hospital burn centers.

Deliverable : Interim and Final Reports

Success Criteria: As defined in protocol

Timing : Q4, FY14

4.4 Clinical Tasks

4.4.1 510k-Required Clinical

Purpose

To obtain clinical data needed for the FDA to clear the dressing with indications for use in thermal burn injury.

Description

In collaboration with our Thermal Burn Consultants (for example, Drs. David Herndon, Carl Schulman, and Meyer Tenenhaus) the Cytori clinical team will design, execute, and complete a clinical trial of the use of the dressing in thermal burn injury. While the precise nature of the study will, naturally, depend on the results of data obtained in earlier studies, a general outline of the study design is shown below (with examples of study endpoints).

Objectives	• Demonstrate safety and feasibility
Test Article	Dressing
Patient Population	• Adult or pediatric patients • Full-thickness or deep partial-thickness burns • Will undergo surgical escharectomy and skin grafting as part of burn treatment • Able to provide written informed consent/assent in accordance with Institutional Review Board (IRB) approval
Design	• Prospective, single arm safety and feasibility study
Sample Size	30-60 patients
Clinical Centers	5-10 sites
Key Endpoints	• Safety Endpoints o Adverse Events (AEs), Serious Adverse (SAEs), and Adverse Device Effects (ADEs) listed and tabulated o Study wound infections (e.g., superficial burn wound infection, invasive burn wound infection) o Complications associated with adipose-tissue harvest (e.g., bleeding, infection) o In-hospital mortality rates (during index hospitalization) o Overall mortality rate • Feasibility / Efficacy Endpoints (formal primary and secondary efficacy endpoints will be pre-specified when designing the Pivotal Trial) o Percent “take” of autologous STSG o Percent of wound healing by contraction or degree of contraction (percentage of original wound size) o Time to wound closure o Post-healing skin function (e.g., scaliness, dryness, itching, perspiration, pigmentation, elasticity, etc.) o Joint function (for applicable sites) o Investigator’s assessment of usability / ease-of-use o Investigator’s assessment of functional and cosmetic results o Patient’s assessment of functional and cosmetic results • Additional Assessments o Collection of health economic data (e.g., hospital length-of-stay, ICU length-of-stay, resource utilization, quality-of-life measures, etc.)
Duration of Follow-up	6 months
Estimated Trial Duration	1 years

Deliverable : Interim and Final Reports

Success Criteria: As defined in protocol

Timing : Q3, FY17

4.5 Regulatory Tasks

4.5.1 510k for Dressing

Purpose

Cytori believes that there are advantages to obtaining FDA clearance of the dressing separately from the Agency's approval of the Celution System. In particular, it is preferred to have an approval that does not limit use of the Celution System in thermal burn injury to any particular dressing. For this reason, it will be necessary to obtain separate regulatory clearance of the dressing. The purpose of these activities is to execute the regulatory tasks needed to obtain clearance of the dressing under the 510k mechanism.

Description

The Cytori Regulatory team will collate data and reports from studies executed under WBS Section 1.3 and 1.6 of this Option to assemble a 510k application package. This will be submitted to the FDA. The team will then respond to any feedback received from the Agency.

The Cytori Regulatory Team has enormous experience in this area. The company has previously obtained 510k clearance of 24 devices.

Deliverable : 510k Application Package

Success Criteria: 510k Clearance

Timing : Q4, FY17

4.6 CMC Tasks

4.6.1 Dressing CMC Optimization

Purpose

Obtaining FDA clearance of the dressing will require data demonstrating that manufacture of the dressing meets FDA standards associated with Chemistry, Manufacturing, and Controls (CMC).

Description

Activities pertaining to GMP manufacturing of the dressing such as manufacturing process development and optimization, sterilization validation, biocompatibility, optimization of formulation, and shelf life determination. The precise nature of these activities will be dependent upon the results of studies executed within the Base Period. It is conceivable that certain dressing candidates may already have all or part of these requirements and studies fully complete. For others, the full scope of CMC may be required. This option is based on the latter case.

Deliverable : Interim and Final Reports

Success Criteria: CMC Report Deemed Suitable for Inclusion in 510k Application Package

Timing : Q3, FY17

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Exhibit 10.22

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. 0003	3. EFFECTIVE DATE 01/05/2015	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*

6. ISSUED BY CODE ASPR-BARDA	7. ADMINISTERED BY *(If other than Item 6)* CODE ASPR-BARDA01
ASPR-BARDA 200 Independence Ave., S.W. Room 640-G Washington DC 20201	ASPR-BARDA 330 Independence Ave, SW, Rm G644 Washington DC 20201

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State, and ZIP Code)*		
CYTORI THERAPEUTICS, INC 1386447 CYTORI THERAPEUTICS, INC. 3020 3020 CALLAN RD SAN DIEGO CA 921211109	(x)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED *(SEE ITEM 11)*
	x	10A. MODIFICATION OF CONTRACT/ORDER NO. HHSO100201200008C
		10B. DATED *(SEE ITEM 13)* 09/28/2012
CODE 1386447 FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*
See Schedule

13. THIS ITEM ONLYAPPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
x	D. OTHER (Specify type of modification and authority) FAR 52.243-2 Alternate 1 (APR 1987) Changes – cost – reimbursement and Mutual agreement of the parties

E . IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (*Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*
Tax ID Number : 33-0827593
DUNS Number : 111029179
Proof of Concept for Use of the Celution System as a Medical Countermeasure for Thermal Burn

A. The purpose of this modification is to incorporate the following changes into the contract:

1.Article G.5., Invoicing /Financing Request and Contract Financial Reporting is hereby modified to add the following:

2) In addition to the Contracting Officer, the Contractor shall submit electronic copies of Continued…

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*		16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)* THOMAS P. HASTINGS	
15B. CONTRACTOR/OFFEROR _____ *(Signature of person authorized to sign)*	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA /s/Thomas P.Hastings *(Signature of Contracting Officer)*	16C. DATE SIGNED *1/5/15*

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

NAME OF OFFEROR OR CONTRACTOR
CYTORI THERAPEUTICS, INC 1386447

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	the invoices to the Contracting Officer's Representative (COR) and to the Program Support Center (PSC) at PSC_Invoices@psc.hhs.gov. B. This is a unilateral, administrative no-cost modification. The total contract amount and all other terms and conditions remain the same. Period of Performance: 09/28/2012 to 09/27/2016				

EXHIBIT 10.39

THIRD AMENDMENT
TO THE 2014 EQUITY INCENTIVE PLAN
OF CYTORI THERAPEUTICS, INC.

THIS THIRD AMENDMENT TO THE 2014 EQUITY INCENTIVE PLAN OF CYTORI THERAPEUTICS, INC. (this " ***Amendment*** "), dated as of January 26, 2017, is made and adopted by CYTORI THERAPEUTICS, INC. , a Delaware corporation (the " ***Company*** "). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, the Company has adopted the 2014 Equity Incentive Plan of Cytori Therapeutics, Inc. (the " ***Plan*** ");

WHEREAS, the Company desires to amend the Plan as set forth below;

WHEREAS, pursuant to Section 18 of the Plan, the Plan may be amended by the Board of Directors of the Company or the Committee; and

WHEREAS, the Board of Directors of the Company has approved this Amendment pursuant to resolutions adopted on January 26, 2017.

NOW, THEREFORE, in consideration of the foregoing, the Company hereby amends the Plan as follows:

1. Section 5.3(c) of the Plan is hereby amended to read as follows:

"(c) Nonemployee Director Compensation . Notwithstanding any provision to the contrary in the Plan, the Board may establish compensation for Nonemployee Directors from time to time, subject to the limitations in the Plan. The Board will from time to time determine the terms, conditions and amounts of all such Nonemployee Director compensation in its discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation, or other compensation, and the value (determined as of the grant date in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) of Awards granted to a Nonemployee Director as compensation for services as a Nonemployee Director during any calendar year of the Company may not exceed $500,000, increased to $700,000 in the calendar year of his or her initial service as a Nonemployee Director (the " ***Director Limit*** "). The Board may make exceptions to the Director Limit for individual Nonemployee Directors in extraordinary circumstances, as the Board may determine in its discretion, provided that the Nonemployee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving Nonemployee Directors."

2. This Amendment shall be and is hereby incorporated in and forms a part of the Plan. All other terms and provisions of the Plan shall remain unchanged except as specifically modified herein. The Plan, as amended by this Amendment, is hereby ratified and confirmed.

I hereby certify that the foregoing Amendment was duly adopted by the Board of Directors of Cytori Therapeutics, Inc. on January 26, 2017.

By: /s/ Jeremy Hayden
Name: Jeremy Hayden
Title: General Counsel

US-DOCS\74905130.2

EXHIBIT 10.40

ASSET PURCHASE AGREEMENT

by and between

Cytori Therapeutics, Inc.

and

Azaya Therapeutics, Inc.

January 16, 2017

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this " Agreement ") dated as of January 16, 2017 (the " Effective Date "), is entered into by and between Cytori Therapeutics, Inc., a Delaware corporation (" Buyer "), and Azaya Therapeutics, Inc., a Delaware corporation (" Seller "). The parties hereto are sometimes referred to herein collectively as " Parties " and each individually as a " Party ."

BACKGROUND

Prior to November 13, 2015, Seller was engaged in the Business.

The Business is composed of certain assets and liabilities that are currently owned, leased or licensed by Seller or in respect of which Seller is currently obligated, as the case may be.

Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller, certain assets of Seller, and Buyer is willing to assume certain liabilities of Seller, in each case as more fully described and upon the terms and subject to the conditions set forth herein.

AGREEMENT

In consideration of the foregoing premises and the respective representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions . As used in this Agreement, the following terms shall have the following meanings:

" Action " means any criminal, judicial, administrative or arbitral action, audit, charge, claim, complaint, demand, grievance, hearing, inquiry, investigation, litigation, mediation, proceeding, subpoena or suit, whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

" Affiliate " means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. The term " control " (including the terms "controlling," "controlled by" and "under common control with") means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, except that "Affiliate" shall not include current or former directors, officers or employees of any Person.

" Ancillary Agreements " means any Bill of Sale, Assignment and Assumption Agreement, Escrow Agreement, Assignment of Trademarks, Assignment of Patents and such other agreements that are entered into in connection with, and referenced in, this Agreement.

" Annual Net Sales " means, with respect to a particular calendar year, all Net Sales of a Covered Product during such calendar year in the applicable territory being measured.

" Assigned Intellectual Property " means all Intellectual Property that is owned by Seller and is used or held for use in, or is necessary or useful for the conduct of, the Business.

" Assigned Patent " means any Patent assigned to Buyer through the Assignment of Patents to be delivered in connection with the Closing.

" Assignment of Patents " means the assignment of Patents included in the Assigned Intellectual Property, in a form mutually acceptable to Buyer and Seller.

" Assignment of Trademarks " means the assignment of Trademarks included in the Assigned Intellectual Property, in a form mutually acceptable to Buyer and Seller.

" Basis " means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction that forms or would reasonably be expected to form the basis for a specific and reasonable foreseeable consequence.

" Bundled Product " means a Covered Product and other products that are not Covered Products either (i) packaged together for sale or shipment as a single unit or (ii) sold together in a kit, where the purchaser is charged a single undifferentiated purchase price for such combination of products.

" Business " means the creation, development, commercialization, and exploitation of, and related activities associated with, Seller's Protein Stabilized Liposomes nanotechnology platform and related assets, including, without limitation, the development and manufacturing of the Generic Product and the Patented Product.

" Business Day " means any day that is not a Saturday, a Sunday or other day on which banks are required or permitted by Law to be closed in the State of California.

" Business Records " means all files, documents, ledgers, papers, books and records and similar information (whether in paper, electronic or other tangible or intangible form) that are used or held for use by Seller or Seller Sub in, or necessary or useful for the conduct of, the Business, the Acquired Assets or the Assumed Liabilities, including all technical information, operating and production records, service records, service protocols, regulatory information (including all filings and correspondence), documentation of service methodologies, quality control records, blueprints, drawings, technical plans, research and development notebooks and files, customer data, mailing lists, warranty information, product testing reports, manuals, engineering and scientific data, catalogs, advertising and other marketing materials, brochures, sales and promotional literature, standard forms of documents, business plans, budgets, price lists, customer lists and lists of suppliers, but excluding any minute books, stock ledgers, financial records, Tax records and other materials that Seller or Seller Sub is required by Law to retain or that is otherwise excluded as set forth in Sections 2.1(d) and 2.1(e) .

" Change of Control Transaction " means any transaction or series of related transaction in which either: (i) there is a consolidation or merger of Buyer which results in the equity holders of Buyer immediately prior to such transaction or series of related transaction owning less than a majority of the equity or voting power of the surviving entity; (ii) there is a sale, transfer, lease or license of all or substantially all of Buyer's assets, or (iii) any other transaction occurs which results in the equity holders of Buyer immediately prior to such transaction owning less than a majority of the equity or voting power of the surviving entity but not including any transaction or series of transactions principally for raising equity capital.

" Code " means the United States Intern al Revenue Code of 1986, as amended.

" Commercially Reasonable Efforts " means the efforts and resources that would be used in the performance of the relevant activity by a company of comparable size and resources as Buyer or Successor Entity, as applicable, engaged in the development or commercialization of pharmaceutical products with regard to a product at a similar stage in its product life, taking into account to the extent reasonable and relevant: issues of safety and efficacy, product profile, market potential, competitive market conditions, duration of exclusivity or other proprietary position of the product and the potential profitability and economic return of the product and other products in development or being commercialized by Buyer or Successor Entity, as applicable, all as measured by the facts and circumstances at the time such efforts are due or subject to performance.

" Company Plan " means the Seller Plans and the PEO Plans.

" Competing Product " means any generic liposomal encapsulation of dox orubicin other than the Generic Product that is used in the treatment of ovarian cancer, breast cancer, multiple myeloma, or Kaposi's sarcoma.

" Contract " means any contract, agreement, indenture, note, bond, loan, instrument, license, lease (including real and personal property leases), conditional sale contract, purchase or sales orders, mortgage, undertaking, commitment, understanding, option, warrant, calls, rights or other enforceable arrangement or agreement, whether written or oral.

" Covered Products " means the Generic Product and the Patented Product.

" Disclosure Schedule " means the disclosure schedule delivered by Seller to Buyer in connection with the execution and delivery of this Agreement.

" EMA " means the European Medicines Agency.

" Employee Information " means the data and any records (including performance reviews) relating to the Transferred Worker that are reasonably necessary to manage the Transferred Worker at or immediately after the Closing.

" Employee Pension Benefit Plan " has the meaning set forth in Section 3(3) of ERISA.

" Encumbrance " means any mortgage, pledge, hypothecation, license, adverse claim, security interest, encumbrance, title defect, title retention agreement, third-party right, option, lien, charge, or installment purchase agreement, right of first refusal, right of preemption or right to acquire, or other restriction or limitation on the right to sell or otherwise dispose of the subject property, but excluding any restriction, right or limitation imposed by this Agreement.

" Environmental Law " means any applicable United States and/or foreign, federal, state, provincial, regional or local Law, past or present and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, or common law, relating to pollution (or the cleanup thereof) or protection of the environment, health or safety (as it relates to Hazardous Substances) or natural resources, including those relating to the use, management, manufacture, presence, containment, recycling, reclamation, reuse, handling, transportation, treatment, storage, disposal, release or discharge of, or exposure to, Hazardous Substances.

" Environmental Permit " means any permit, approval, identification number, license or other authorization required under any applicable Environmental Law.

" ERISA " means the Employee Retirement Income Security Act of 1974, as amended.

" ERISA Affiliate " means any Person required at any particular time to be aggregated with Seller under Sections 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

" FDA " means the United States Food and Drug Administration.

" First EMA Generic " means the first generic formulation of CAELYX® (Johnson & Johnson) approved for commercial sale by EMA.

" Following EMA Generic " means any generic formulation of CAELYX® (Johnson & Johnson) approved for commercial sale by EMA other than the First EMA Generic.

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

" Generic Product " means ATI-0918 , Seller's generic bioequivalent formulation of DOXIL/CAELYX® (Johnson & Johnson), a chemotherapy drug that is a liposomal encapsulation of doxorubicin.

" Global Per Unit Average Selling Price " means, with respect to any product (including any Covered Product) included in a Bundled Product that is Sold on a Stand-Alone Basis in one or more Sales Regions during a particular period of time, the amount equal to (i) the total amount of Net Sales of such product in all Sale s Regions during such period of time, not including any such products that are Sold as a Bundled Product, divided by (ii) the total number of units of such product Sold during such period of time within all Sales Regions, not including any such products th at are Sold as a Bundled Product.

" Governmental Authority " means any international, multilateral, multinational, national, federal, state, provincial or local governmental, regulatory or administrative authority, agency or commission, any court or self-regulatory organization, any judicial or arbitral body, any arbitrator or mediator or any instrumentality of any of the foregoing.

" Governmental Order " means any decision, ruling, order, charge, writ, judgment, injunction, decree, stipulation, determination, award or binding agreement issued, promulgated or entered by or with any Governmental Authority.

" Hazardous Substances " means (i) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials and PCBs, and (ii) any other chemicals, materials or substances listed, defined, designated, regulated, classified as, or otherwise determined to be, toxic or hazardous or as a pollutant, contaminant or waste, or are otherwise regulated, under or pursuant to any applicable Environmental Law.

" Indebtedness " means (i) all indebtedness for borrowed money, (ii) all obligations for the deferred purchase price of assets, property or services (other than trade payables, accrued compensation or similar obligations incurred in the ordinary course of business), (iii) all obligations evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property, (v) all obligations under capital leases, (vi) all obligations as an account party under a letter of credit (to the extent such letter of credit has been drawn by the beneficiary thereof) or similar facilities (to the extent drawn), (vii) all obligations under any currency, interest rate or other hedge agreement or any other hedging arrangement, (viii) all direct or indirect guarantee obligations in respect of obligations of the kind referred to in clauses (i) through (vii) above, and (ix) all obligations of the kind referred to in clauses (i) through (viii) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and Contract rights) owned by Seller, whether or not Seller has assumed or become liable for the payment of such obligation. For purposes of this Agreement, Indebtedness includes all accrued interest, success fees, prepayment premiums, make-whole premiums or penalties and fees or expenses actually incurred (including attorney's fees) in association with the prepayment of any Indebtedness.

" Intellectual Property " means the rights associated with or arising out of any of the following in any jurisdiction throughout the world: (i) all patents and patent applications, together with all reissuances, divisionals, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, and any identified invention disclosures (" Patents "); (ii) trade secret rights and corresponding rights in confidential information and other non-public information, ideas, formulas, compositions, inventor's notes, discoveries and improvements, know how, manufacturing and production processes and techniques, testing information (including testing protocols and results), research and development information, prototypes, algorithms, inventions, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals, technical data, business and marketing plans, market surveys, market know-how and customer lists and information (whether or not any of the foregoing is patentable) (" Trade Secrets "); (iii) all registered or unregistered copyrights, copyrightable works, rights in databases, data collections, mask works, copyright registrations, applications and extensions therefor and any other rights in works of authorship (" Copyrights "); (iv) all trademarks, service marks, logos, trade dress and trade names indicating the source of goods or services, and other indicia of commercial source or origin (whether registered, common law, statutory or otherwise), all registrations and applications to register the foregoing anywhere in the world and all goodwill associated therewith (" Trademarks "); (v) all computer software and code, including assemblers, applets, compilers, source code, object code, development tools, design tools, websites, utilities, library files, user interfaces, data, and all documentation and manuals related to such computer software and code in any form or format, however fixed, but excluding "off-the-shelf" software that has not been modified by Seller (" Software "); (vi) all internet electronic addresses, uniform resource locators and alphanumeric designations associated therewith and all registrations for any of the foregoing (" Domain Names "); and (vii) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

" IP Contracts " means any Contract relating to (i) the assignment, license, sublicense or other right of Seller to use any Intellectual Property of any Person; (ii) Seller's obligation to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any Liability or provide a right of rescission with respect to the infringement or misappropriation of the Intellectual Property of any Person other than Seller; (iii) rights to indemnity arising out of the acquisition or license of Intellectual Property; and (iv) any joint development or joint venture agreements.

" IRS " means the Unit ed States Internal Revenue Service.

" Law " means the law of any jurisdiction, whether international, multilateral, multinational, national, federal, state, provincial, or local law, including a Governmental Order or act, statute, ordinance, regulation, rule, extension order or code promulgated by a Governmental Authority.

" Lease " means that certain Shopping Center Lease between Buyer and Schmid-Moulton Parkway, a California limited partnership, effective as of the Closing, for the premises described therein as approximately 7,130 square feet of space located at 12500 Network Blvd., Suite 207, San Antonio, Texas 78249 (the " Leased Premises ").

" Liabilities " means any and all debts, liabilities, commitments and obligations of any kind, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or undeterminable, on- or off-balance sheet and whether or not required to be recorded on a balance sheet prepared in accordance with GAAP, including those arising under any Law, Action or Governmental Order and those arising under any Contract or otherwise.

" License/Transfer Fee " shall mean all fixed license fees, milestone amounts or other upfront payments (in each case, including the fair market value of any non-monetary consideration) actually rec eived by Buyer or its Affiliates from a licensee, sublicensee, assignee or transferee in connection with a Qualifying Transaction, but excluding all other amounts received pursuant to such Qualifying Transaction, including the following types of payments: (i) royalties, earn-outs and similar non-milestone payments triggered by sales of the Patented Product, (ii) reimbursements for research and development activities for the Patented Product to be performed by or at the expense of Buyer or its Affiliates; (iii) reimbursements for third party costs incurred by Buyer or its Affiliates with respect to the prosecution and maintenance of any Intellectual Property after the execution of such agreement; (iv) amounts received for the supply of the Patented Product by Buyer or its Affiliates at fair market value. For clarity, research or development activities include without limitation the design and conduct of non-clinical and pre-clinical studies and clinical trials (including in the conduct of any post-marketing studies). Further, should any upfront payments pursuant to a Qualifying Transaction be made by means of non-monetary consideration (e.g., equity securities of the licensee, sublicensee, assignee or transferee), Buyer shall have the option to provide Seller (or have the licensee, sublicensee, assignee or transferee provide directly to Seller) the same non-monetary consideration (or an equivalent cash payment in US dollars as the Parties mutually agree), that Buyer or its Affiliates receives from the Qualifying Transaction.

" Losses " means direct damages (but excluding indirect, consequential, incidental or punitive damages), fines, fees, penalties, liabilities, claims, losses, demands, suits, judgments, awards, settlements, actions, obligations, costs and expenses (including reasonable costs of attorneys, consultants and experts, alternative dispute resolution and court costs, or other reasonable expenses of investigation, defense, settlement, litigation or other Actions or of any default or assessment).

" Net Sales " means, for any period of time, (i) the aggregate gross revenues of Buyer or Successor Entity, as applicable, from the Sale of the Covered Products after the Closing to Third Parties other than licensees or sublicensees, including Third Party distributors, and (ii) the aggregate gross revenues of Affiliates, licensees or sublicensees of Buyer or Successor Entity, as applicable, from the Sale of the Covered Products after the Closing to Third Parties, in each case in bona fide arms-length transactions, less any Permitted Deductions applicable to such Covered Products. Net Sales shall be determined from the books and records of, as applicable, Buyer, Successor Entity, Affiliates, licensees or sublicensees, which shall be maintained in accordance with GAAP, consistently applied across its product lines.

For the avoidance of doubt, (a) Net Sales shall include, without duplication, (i) the aggregate gross revenues received by Buyer or Successor Entity, as applicable, and their respective Affiliates, licensees or sublicensees, pursuant to a net profits arrangement, (ii) the aggregate gross revenues received by Buyer or Successor Entity, as applicable, and their respective Affiliates, licensees or sublicensees, pursuant to a marketing and distribution

arran gement, and (iii) the Sale of a Covered Product as part of a Bundled Product together with other products, as provided below, and (b) the transfer or sale of free samples of Covered Products or potential clinical trial materials containing the Covered Prod ucts, or transfers of Covered Products, to patients under any patient assistance program, expanded access program, or compassionate use programs in any country, or other transfers or dispositions for charitable, promotional, pre-clinical, clinical, manufac turing, testing or qualification, regulatory or governmental purposes shall not be included in Net Sales, unless and then only to the extent that revenue from any such transfer, sale or disposition is otherwise included in the revenues of Buyer or Successo r Entity, as applicable and their respective Affiliates, licensees or sublicensees pursuant to licenses or sublicenses by any Buyer or Successor Entity, as applicable. For purposes of calculating Net Sales, all amounts shall be converted into United State s dollars using Buyer's or Successor Entity's, as applicable, standard conversion methodology consistent with GAAP. Notwithstanding anything to the contrary in this Agreement or in any financial statements prepared by Buyer, Successor Entity, or their res pective Affiliates, licensees or sublicensees, as applicable, or to the extent it may otherwise be required by GAAP, whenever any Covered Product is Sold as part of a Bundled Product in any Sales Region over a particular period of time, the "Net Sales" for such Covered Product resulting from such Sale of such Bundled Product in such Sales Region during such period of time shall be calculated as follows:

(i) if the Covered Product was also Sold on a Stand-Alone Basis within such Sales Region during such period of time, then the " Net Sales " for such Covered Product resulting from such Sales of such Bundled Product in such Sales Region during such period of time shall equal the product of (a) the Per Unit Average Selling Price over such period of time, within such Sales Region, for such Covered Product, multiplied by (b) the number of Covered Products Sold as Bundled Products in such Sales Region over such period of time;

(ii) if the Covered Product was not Sold on a Stand-Alone Basis within such Sales Region during such period of time, but the Covered Product was Sold on a Stand-Alone Basis in at least one other Sales Region during such period of time, then the " Net Sales " for such Covered Product resulting from such Sales of such Bundled Product in such Sales Region during such period of time shall equal the product of (a) the Net Sales for such Bundled Product in such Sales Region during such period of time multiplied by (b) a fraction, the numerator of which is the Global Per Unit Average Selling Price over such period of time for such Covered Product, and the denominator of which is the sum of (A) the numerator, (B) the aggregate Per Unit Average Selling Prices over such period of time, within such Sales Region, of all other products, if any, included in such Bundled Product that are Sold on a Stand-Alone Basis within such Sales Region during such period of time, (C) the aggregate Global Per Unit Average Selling Prices over such period of time of all other products, if any, included in such Bundled Product that are not Sold on a Stand-Alone Basis within such Sales Region during such period of time but are Sold on a Stand-Alone Basis in at least one other Sales Region during such period of time, and (D) for all other products, if any, included in such Bundled Product that are not Sold on a Stand-Alone Basis within any Sales Region during such period of time, an amount equal to the aggregate deemed per unit average selling prices of all such other products as such amount is determined in good faith by Buyer, Successor Entity, or their respective Affiliates, licensees or sublicensees, as applicable;

(iii) if the Covered Product was not Sold on a Stand-Alone Basis within any Sales Region during such period of time, but at least one of the other products included in such Bundled Product was Sold on a Stand-Alone Basis in at least one Sales Region during such period of time, then the " Net Sales " for such Covered Product resulting from such Sales of such Bundled Product in such Sales Region during such period of time shall equal the product of (a) the Net Sales for such Bundled Product in such Sales Region during such period of time multiplied by (b) a fraction, the numerator of which is the deemed per unit average selling price for such Covered Product as such amount is determined in good faith by Buyer, Successor Entity, or their respective Affiliates, licensees or sublicensees, as applicable, and the denominator of which is the sum of (A) the numerator, (B) the aggregate Per Unit Average Selling Prices over such period of time, within such Sales Region, of all other products, if any, included in such Bundled Product that are Sold on a Stand-Alone Basis within such Sales Region during such period of time, (C) the aggregate Global Per Unit Average Selling Prices over such period of time of all other products, if any, included in such Bundled Product that are not Sold on a Stand-Alone Basis within such Sales Region during such period of time but are Sold on a Stand-Alone Basis in at least one other Sales Region during such period of time, and (D) for all other products, if any, included in such Bundled Product that are not Sold on a Stand-Alone Basis within any Sales Region during such period of time, an amount equal to the aggregate deemed per unit average selling prices of all such other products as such amount is determined in good faith by Buyer, Successor Entity, or their respective Affiliates, licensees or sublicensees, as applicable;

(iv) if none of the products included in such Bundled Product, including the Covered Product, were sold on a Stand-Alone Basis within any Sales Region during such period of time, then the " Net Sales " for such Covered Product resulting from such Sales of such Bundled Product in such Sales Region during such period of time shall be calculated by multiplying the sales price of such Bundled Prod ucts by the fraction A/(A+B) where A is the fair market value of the Covered Product and B is the fair market value of the other product(s) in the combination sale , as determined in good faith by Buyer, Successor Entity, or their respective Affiliates, lic ensees or sublicensees, as applicable ; and

(v) if the calculation of Net Sales resulting from a Bundled Product in a country cannot be determined by any of the foregoing methods, the calculation of Net Sales for such Bundled Product shall be determined between (a) Seller, on the one hand, and (b) by Buyer, Successor Entity, or their respective Affiliates, licensees or sublicensees, as applicable, on the other hand, in good faith negotiations.

" Patented Product " means any product manufactured, used, sold, offered for sale or imported which would, absent a license to or ownership of an Assigned Patent, infringe, or contribute to, or induce the infringement of, any Valid Claim of such Assigned Patent, including ATI 1123, a liposomal formulation of Docetaxel.

" PEO Plan " means each Plan previously maintained or sponsored by PEO for the benefit of one or more Workers.

" Permit " means any permit, license, franchise, approval, consent, registration, clearance, variance, exemption, identification number, certificate of authority, easement, right or authorization , or any waiver of the foregoing, issued by any Governmental Authority with respect to the conduct of the Business, and all pending applications related thereto.

" Permitted Deductions " means, without duplication, the following items as applicable to Covered Products to the extent actually taken or incurred, in accordance with standard allocation procedures, allowance methodologies and accounting methods consistently applied, in accordance with GAAP (except as otherwise provided below):

(i) credits or allowances for returns, rejections or recalls (due to spoilage, damage, expiration of useful life or otherwise), retroactive price reductions or billing corrections;

(ii) separately itemized invoiced freight, postage, shipping and insurance, handling and other transportation costs;

(iii) sales, use, value added and other similar taxes (excluding income taxes), tariffs, customs duties, surcharges and other governmental charges levied on the production, sale, transportation, delivery or use of the Covered Products that are incurred at time of sale or are directly related to the sale;

(iv) any quantity, cash or other trade discounts, rebates, refunds, charge backs, fees, credits or allowances (including amounts incurred in connection with government-mandated rebate and discount programs, Third Party rebates and charge backs, and hospital buying group/group purchasing organization administration fees and payor organizations), distribution fees, and sales commissions paid to Third Parties; and

(v) deductions for bad debts.

In the case of deductions for bad debts, the adjustment amount will be based on actual bad debts incurred and written off as uncollectible by (1) Buyer or Successor Entity, as applicable, or (2) Affiliates, licensees or sublicensees of Licensee Buyer or Successor Entity, as applicable, in a quarter, net of any recoveries of previously written off bad debts from current or prior quarters.

" Permitted Encumbrances " means (i) liens for Taxes not yet due and payable, (ii) statutory liens of landlords, liens of carriers, warehouse persons, suppliers, mechanics and material persons and other liens imposed by Law, in each case incurred in the ordinary course of business consistent for sums not yet due and payable, (iii) Encumbrances in favor of licensors pursuant to Inbound Licenses, and (iv) with respect to real property, easements, rights-of-way, and other similar restrictions, in each such case which do not, individually or in the aggregate, materially impair the value of such real property or materially interfere with its use in the ordinary course of business.

" Person " means any natural person, corporation, general partnership, limited partnership, limited or unlimited liabilit y company, proprietorship, joint venture, other business organization, trust, union, association or Governmental Authority.

" Personally Identifiable Information " means information, data, a data element or combination of data elements that can be used to uniquely identify, contact or locate a natural person.

" Per Unit Average Selling Price " means, with respect to any product (including any Covered Product) included in a Bundled Product that is Sold on a Stand-Alone Basis in a Sales Region during a particular period of time, the amount equal to (i) the total amount of Net Sales of such product in such Sales Region during such period of time, not including any such products that are Sold as a Bundled Product, divided by (ii) the total number of units of such product Sold during such period of time within such Sales Region, not including any such products that are Sold as a Bundled Product.

" Plan " means any employment, consulting, bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, equity (or equity-based), leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, medical, dental, vision, welfare, accident, disability, workmen's compensation or other insurance, severance, separation, termination, change of control, collective bargaining or other benefit plan, understanding, agreement, practice, policy or arrangement of any kind (whether written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic, currently effective or terminated), and whether or not subject to ERISA, including any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

" Pre-Closing Tax Period " means any Tax period (or portion thereof) ending on or before the Closing Date.

" Pre-Closing Taxes " means Taxes that relate to or are attributable to any Pre-Closing Tax Period.

" Qualifying Product/Patent " means (i) the Patented Product (including when combined with radiotherapy) and, (ii) any Assigned Patent.

" Qualifying Transaction " shall mean the license, sublicense, assignment or transfer of any rights to a Qualifying Product/Patent to a Third Party, but shall not include a Change of Control Transaction.

" Registered Intellectual Property " means any Assigned Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any appropriate Governmental Authority.

" Representatives " means, with respect to any Person, such Person's officers, directors, employees, agents, counsel, accountants, financial advisors, lenders, consultants and other representatives, except that in respect of Seller "Representatives" shall not include any Transferred Worker.

" ROW " means everywhere in the world other than the European Union.

" Sale ," " Sell " or " Sold " means the commercial sale for value by Buyer or Successor Entity, as applicable, and their respective Affiliates, licensees or sublicensees pursuant to licenses or sublicenses by Buyer or Successor Entity, as applicable, to such licensees or sublicensees of a Covered Product to any Third Party.

" Sales Region " means, with respect to a period of time, each of the sales regions used by Buyer, Successor Entity, or their respective Affiliates, licensees or sublicensees, as applicable, in its financial statements as publicly reported for such period of time, which sales regions shall cover in the aggregate all areas of the world.

" Securities Act " means the Securities Act of 1933, as amended from time to time.

" Seller Material Adverse Effect " means any material adverse effect on (i) the Acquired Assets or the Assumed Liabilities or (ii) the ability of Seller to perform its obligations under this Agreement or any Ancillary Agreement in a timely manner or to consummate the transactions contemplated by this Agreement or the Ancillary Agreements without material delay.

" Seller Plan " means a Plan, other than a PEO Plan, that Seller or any of its Affiliates sponsors, maintains, has any obligation to contribute to, has or could reasonably be expected to have Liability under or is otherwise a party to, or that otherwise provides benefits for current or former employees, directors, officers, stockholders, consultants or independent contractors of Seller or any of its Affiliates (or their dependents and beneficiaries).

" Seller Sub " means Azaya Europe Limited, a private limited company incorporated in England and Wales, which is a wholly-owned Subsidiary of Seller.

" Stand-Alone Basis " means, with respect to any Sales Region, that a Covered Product or other product included with a Covered Product in a Bundled Product (i) is sold in such Sales Region other than as part of a Bundled Product and (ii) has aggregate Annual Net Sales in such Sales Region (excluding Net Sales of such products that are sold as a Bundled Product) equivalent to at least $100,000.

" Subsidiary " means, with respect to any Person, any other Person (i) of which the first Person owns directly or indirectly 50% or more of the equity interest in the other Person, (ii) of which the first Person or any other Subsidiary of the first Person is a general partner, (iii) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions with respect to the other Person are at the time owned by the first Person and/or one or more of the first Person's Subsidiaries or (iv) in which the first Person has the contractual or other right to designate a majority of the board of directors or other governing body.

" Tangible Property " means all machinery, tools, equipment, fixtures, vehicles, spare parts, storage devices, office supplies, computers, servers and other tangible personal property, in each case whether owned or leased, that is used or held for use by Seller.

" Tax " and " Taxes " means (i) any net income, corporate, capital gains, capital acquisitions, inheritance, gift, alternative minimum, add-on minimum, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, estimated, payroll, employment, excise, severance, stamp, occupation, property, environmental or windfall profit tax, custom duty or any other tax, governmental fee or other like assessment or charge whatsoever, together with any interest or any penalty, addition to tax or additional amount in respect of the foregoing, in each case imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax or other amount (each, a " Tax Authority "), (ii) any liability for the payment of any amounts of the type described in clause (a) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any taxable period, and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to indemnify any other Person.

" Tax Return " means any return, statement, report or form (including information returns and reports) required to be filed with respect to Taxes.

" Third Party " means any Person other than Buyer, Seller or their respective Affiliates.

" Valid Claim " shall mean a claim of any issued, unexpired patent or a claim of a pending patent application which has not been dedicated to the public, disclaimed, abandoned or held invalid or unenforceable by a court or other government agency of competent jurisdiction in a decision from which no appeal can be taken or is otherwise not taken.

" Worker " means a current or former employee, di rector, officer, consultant or independent contractor of Seller or its Subsidiaries.

1.2 Additional Defined Terms . Other terms defined are in the other parts of this Agreement indicated below:

“Accountants”	5.17(d)
“Acquired Assets”	2.1
“Additional Third Party Generic License”	5.14(c)
“Additional Third Party Patent License”	5.14(d)
“Agreement”	Preamble
“Allocation Schedule”	5.4(d)
“Appraiser”	5.17(d)
“Assignment and Assumption Agreement”	2.3(a)
“Assumed Contractor Claims”	2.3(d)
“Assumed Contracts”	2.1(c)
“Assumed Liabilities”	2.3(a)
“Assumed Material Contracts	3.15(b)
“Assumed Payment Obligations”	2.3(d)
“Assumed Trade Payables”	2.3(c)
“Audit”	5.17(a)
“Audit Notice”	5.17(a)
“Average Trading Price”	2.5(a)
“Balance Sheet”	3.6(a)
“Balance Sheet Date”	3.5
“Business Property”	2.1(h)
“Buyer”	Preamble
“Buyer Indemnitees”	6.1
“Chiltern”	2.8(m)
“Claimant”	6.5(a)
“Claim Certificate”	6.5(a)
“Closing”	2.6
“Closing Consideration”	2.5
“Closing Date”	2.6
“Closing Date Balance Sheet”	5.10(b)
“Closing Shares”	2.5(a)
“Commercialization Milestone Event”	5.13(a)
“Commercialization Milestone Payment”	5.13(a)
“Common Stock”	2.5(a)
“Competitive Business Activity”	5.5(a)
“Confidential Information”	5.2(b)
“Confidentiality Agreement”	5.2(a)
“Contractor”	2.3(d)
“Contractor Release”	2.3(d)
“Contractor Services”	2.3(d)
“Damage Claims”	2.3(d)
“Disclaimed Information”	3.24
“Dispute Notice”	5.17(d)
“Disputed Item”	5.17(d)
“Earn-Out Cap”	5.14(a)
“Earn-Out Commencement Date”	5.14(a)
“Earn-Out Payments”	5.14(b)
“Effective Date”	Preamble
“Escrow Agent”	2.5(b)
“Escrow Agreement”	2.5(b)
“Escrow Shares”	2.5(b)
“Exchange Act”	5.5(a)
“Excluded Assets”	2.2
“Excluded Contracts”	2.2(a)
“Excluded Liabilities”	2.4

“Existing Lease”	2.7(c)
“Financial Statements”	3.5
“Generic Earn-Out Payments”	5.14(a)
“Generic Earn-Out Period”	5.14(a)
“General Product Failure”	5.16
“Holder”	5.19(d)
“Inbound Licenses”	5.19(d)
“IP Rights”	5.14(c)
“IRCA”	3.9(e)
“Lawsuit”	2.3(d)
“Leased Premises”	Definition of Lease
“License/Transfer Payment”	5.15(a)
“Material Contracts”	3.15(a)
“Nonassignable Assets”	5.6(a)
“Net Insurance Repayment”	6.4(b)
“Oxford”	2.8(o)
“Party” or “Parties”	Preamble
“Patented Earn-Out Payments”	5.14(b)
“Patented Earn-Out Period”	5.14(b)
“PEO”	3.8(a)
“PEO Agreement”	3.8(a)
“Progress Report”	5.12(a)
“Property Taxes”	5.4(f)
“Public Company”	5.5(a)
“Purchase Consideration”	2.5
“Registrable Securities”	5.19(e)
“Registration Expenses	5.19(c)
“Registration Statement”	5.19(f)
“Regulatory Permits”	3.18(a)
“Release”	2.3(d)
“Required Consents”	3.4(a)
“Required Vote”	3.3(b)
“Respondent”	6.5(a)
“Restricted Period”	5.5(a)
“Restricted Persons”	5.5(a)
“Restricted Territory”	5.5 (a)
“SEC”	4.5
“SEC Documents”	4.5
“Seller”	Preamble
“Seller Indemnitees”	6.2
“Shelf Registration”	5.19(a)
“Shelf Registration Period”	5.19(b)
“Subcontractors”	2.3(d)
“Successor Entity”	5.12(a)
“Termination Date”	7.1(b)
“Third Party (Sub)Licensee”	5.12(c)
“Transfer Taxes”	5.4(a)
“Transferred Worker”	5.7(a)
“WARN Act”	3.9(c)
“Written Agreement”	5.12(c)

1.3 Other Definitional and Interpretive Matters . As used in this Agreement, except to the extent that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated, and the contents of the Disclosure Schedule and the other Schedules form an integral part of this Agreement and any reference to "this Agreement" shall be deemed to include the Schedules;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the words "include," "includes" or "including" (or similar terms) are used in this Agreement, they are deemed to be followed by the words "without limitation";

(d) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) any reference in this Agreement to gender shall include all genders, and the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(f) any reference herein to any statute shall also be deemed to refer to all rules and regulations promulgated thereunder;

(g) if any action is to be taken by any Party hereto pursuant to this Agreement on a day that is not a Business Day, such action shall be taken on the next Business Day following such day;

(h) unless indicated otherwise, mathematical calculations contemplated hereby will be made to four digits, but payments will be rounded to the nearest whole cent, after aggregating all payments due to or owed by a Person;

(i) references to a Person are also to its permitted successors and assigns;

(j) documents or other information and materials shall be deemed to have been "made available" by Seller if and only if Seller has posted such documents and information and other materials to the online data room at least 48 hours prior to the execution and delivery of this Agreement by the Parties;

(k) although the same or similar subject matters may be addressed in different provisions of this Agreement, the Parties intend that, except as reasonably apparent on the face of the Agreement or as expressly provided in this Agreement, each such provision will be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content);

(l) the doctrine of election of remedies will not apply in constructing or interpreting the remedies provisions of this Agreement or the equitable power of a court considering this Agreement or the transactions contemplated hereby;

(m) "ordinary course of business" (or similar terms) shall be deemed followed by "consistent with past practice (including in quantity and frequency)";

(n) all acts and proceedings taken and all documents executed and delivered by the Parties at the Closing shall be deemed to have been taken and executed simultaneously, and, except as permitted hereunder, no acts or proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delive red;

(o) references to Seller's "knowledge" (and words of similar import) mean the actual knowledge of Michael Dwyer, Gavin Anderson, John Kerr, and Hugh Hierholzer, none of whom shall have any personal liability or obligations regarding such knowledge of Seller;

(p) no parol evidence will be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernable from a reading of this Agreement without consideration of any extrinsic evidence; and

(q) the Parties have participated jointly in the negotiation and drafting hereof; if any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision hereof; no prior draft of this Agreement nor any course of performance or course of dealing will be used in the interpretation or construction hereof.

ARTICLE 2
PURCHASE AND SALE OF ASSETS; CLOSING

2.1 Purchase and Sale of Assets . At the Closing, upon the terms and subject to the conditions of this Agreement, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire, assume and accept from Seller, free of all Encumbrances (other than Permitted Encumbrances), the right, title and interest in, to and under all of the assets, properties and rights of every kind and nature which relate to or are used, held for use or useful in connection with the Business, other than the Excluded Assets (collectively, the " Acquired Assets "),including, without limitation, the following:

(a) all Assigned Intellectual Property;

(b) the Covered Products;

(c) all of the Contracts listed in Section 2.1(c) of the Disclosure Schedule (the " Assumed Contracts "), and the rights, claims and incidents of Seller thereunder from and following the Closing Date;

(d) all Business Records, and the right to access any Business Records that are not delivered to Buyer at Closing, including access to Business Records necessary for Buyer's making Tax filings and preparing financial statements, with Seller being entitled to retain copies of such Business Records it deems reasonably necessary for Seller to make Tax filings;

(e) to the extent permitted by applicable Law, all Employee Information, with Seller being entitled to retain copies of such Employee Information it deems reasonably necessary for Seller to comply with applicable Law;

(f) all rights, claims and causes of action that are related to the Business, any of the Assumed Liabilities or any of the Acquired Assets;

(g) all rights, claims and credits of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors in connection with products sold or services provided to Seller for or in connection with the Business, or in respect of any of the Acquired Assets or any Assumed Liabilities;

(h) all personal property of every kind and description used or held for use by Seller in, or necessary for, the operation of the Business, including all tangible assets and all other current assets, property and equipment, inventory, study and other data, know-how, formulae, processes (including manufacturing processes and requirements), reports, books, records, files, designs, regulatory licenses and approvals, to the extent transferable, and other regulatory information, including the items set forth on Section 2.1(h) of the Disclosure Schedule (the " Business Property ");

(i) to the maximum extent assignable, all Permits used or held for use in, or necessary or useful for the conduct of, the Business; and

(j) all goodwill of or relating to the Business.

2.2 Excluded Assets . Notwithstanding any provision of this Agreement to the contrary, Buyer shall not acquire, and the Acquired Assets shall not include, the following (the " Excluded Assets "):

(a) all Contracts of Seller not listed in Section 2.1(c) of the Disclosure Schedule (the " Excluded Contracts ");

(b) all Tangible Property listed on Section 2.2(b) of the Disclosure Schedule;

(c) all cash, cash equivalents, bank accounts, certificates of deposit, treasury bills, treasury notes and marketable securities of Seller;

(d) all accounts receivable, notes receivable and other receivables (whether short-term or long-term) of Seller;

(e) all deposits and prepaid expenses made or paid to utility companies, vendors or other Persons;

(f) all data and records with respect to Workers who are not the Transferred Worker or who do not become service providers to Buyer or its Affiliates at or after the Closing;

(g) all rights, claims and causes of action that are related to the Excluded Assets and Excluded Liabilities;

(h) all rights of Seller under th is Agreement and the Ancillary Agreements;

(i) the corporate charter, any qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, corporate seal, minute books, stock transfer books, blank stock certificates, books and records relating to Taxes, and any other documents relating to the governance, organization, maintenance and existence of Seller or Seller Sub;

(j) shares, stock or equity in terests in Seller or Seller Sub or their respective Affiliates;

(k) all Seller Plans;

(l) all Tax assets and all claims arising from a refund or prepayment of Taxes and other governmental charges of whatever nature with respect to Pre-Closing Taxes;

(m) all insurance policies of Seller, all records relating thereto and all rights to applicable claims and proceeds thereunder (except, to the extent applicable, any insurance proceeds paid or payable by any insurer for any tangible Business Property that is destroyed or damaged after the date of this Agreement and prior to the Closing);

(n) the "Azaya Therapeutics" name and the "www. azayatherapeutics.com" Domain Name; and

(o) any other assets that are specifically identified or described on Section 2.2(o) of the Disclosure Schedule.

2.3 Assumed Liabilities .

(a) At the Closing, in accordance with the terms and conditions of the Assignment and Assumption Agreement, substantially in the form attached hereto as **Exhibit A** (the " Assignment and Assumption Agreement "), Buyer shall accept, assume and agree to pay, perform or otherwise discharge on a timely basis, as the case may be, only the Assumed Liabilities. " Assumed Liabilities " means (i) the Assumed Payment Obligations and (ii) all Liabilities under the Assumed Contracts arising after the Closing Date (but excluding any Liabilities related to a breach, non-performance or default by Seller under the Assumed Contracts occurring prior to or on the Closing Date (unless otherwise expressly provided in this Agreement or any Ancillary Agreement) and excluding Liabilities of the parties thereto that are not Seller).

(b) If any claim arises or occurs against Buyer with respect to any of the Assumed Liabilities, Buyer shall have, and Seller hereby assigns to Buyer, any defense, counterclaim or right of setoff that would have been available to Seller or the Business if such claim had been asserted against Seller or the Business. The assumption by Buyer of the Assumed Liabilities and the transfer of the Assumed Liabilities by Seller shall in no way expand the rights or remedies of any Person against Buyer or Seller or their respective Affiliates, officers, directors, employees, stockholders and advisors as compared to the rights and remedies that such Person would have had against such parties had Buyer not assumed the Assumed Liabilities.

(c) At the Closing, Buyer will assume and fully pay, perform or otherwise discharge, on a timely basis (but in no event more than thirty (30) days following the Closing), the outstanding accounts payable of Seller set forth on, and up to the amounts set forth on, Section 2.3(c) of the Disclosure Schedule (the " Assumed Trade Payables "). Seller hereby represents and warrants that (i) each of the Assumed Trade Payables represents a bona bide payment obligation to a Third Party; and (ii) each of the pay-off amounts set forth on Section 2.3(c) of the Disclosure Schedule completely and accurately represents the full amount due and owing by Seller to each such Third Party through the Closing Date (including accrued interest). Seller agrees that it shall use commercially reasonable efforts to obtain pay-off confirmation letters from each Third Party holding an Assumed Trade Payable in an aggregate amount greater than $25,000. Seller further agrees that it will comply with the reasonable requests of Buyer with respect to communication, negotiation and disclosures to such Third Parties in connection with the discharge of such Assumed Trade Payables. In the event that Buyer seeks to resolve any Assumed Trade Payable for an amount less than the amount reflected on Section 2.3(c) of the Disclosure Schedule, Buyer will use commercially reasonable efforts to obtain a release from the third party to whom such Assumed Trade Payable is owed that releases Seller and Buyer from the remaining amount of such Assumed Trade Payable; provided that in the event that such Third Party refuses to execute a release in connection with a partial payment of an Assumed Trade Payable, Buyer agrees to remain solely responsible for the payment, performance and otherwise discharge, on a timely basis, of the full amount owed to such Third Party as set forth on Section 2.3(c) of the Disclosure Schedule and to indemnify and hold harmless Seller in respect of, the balance of such Assumed Trade Payable. The Parties agree and acknowledge that Seller will remain solely liable for, and shall indemnify and hold harmless Buyer in respect of, (i) all outstanding accounts payable of Seller that are not listed on Section 2.3(c) of the Disclosure Schedule; and (ii) any amounts that a Third Party alleges it is owed by Seller that are in excess of the respective Assumed Trade Payable amount set forth on Section 2.3(c) of the Disclosure Schedule for such Third Party (except for such amounts solely attributable to delays caused by Buyer's attempts to negotiate the pay-off amount of such Assumed Trade Payable, including additional accrued interest on such Assumed Trade Payable).

(d) On or before the Closing, Buyer shall negotiate in good faith with Metropolitan Contracting Company, LLC (" Contractor ") the process by which Buyer will make a payment of $*** (the " Assumed Contractor Claims ") to a third party escrow agent for the benefit of Contractor to pay, perform and otherwise discharge any and all claims (the " Damage Claims ") asserted by Contractor against Seller in connection with past services (the " Contractor Services ") perform ed by Contractor and its subcontractors (the " Subcontractors "). Buyer's payment of the $*** to Contractor is conditioned on (collectively, the " Contractor Release "): (i) Contractor releasing the Affidavits Claiming Mechanic's Lien recorded as Document No. 20150104503 and Document No. 20150104504 in the Official Public Records of Real Property, Bexar County, Texas; (ii) Contractor providing a sworn statement of the legal fees and costs incurred in Civil Action 2015-C1-20831 (the " Lawsuit ") in the District C ourt, 73 rd Judicial District, Bexar County, Texas (the " Court "), (iii) Contractor nonsuiting with prejudice the Lawsuit and such Lawsuit being dismissed with prejudice by the Court, (iv) Contractor, Buyer and Seller executing and delivering a full mutual r elease (the " Release ") of Contractor, Buyer and Seller in connection with the Contractor Services and (v) Contractor agreeing to indemnify Buyer and Seller in respect of any claims by a Subcontractor in respect of the Contractor Services. Seller shall be solely responsible for the payment of any Damage Claims in excess of $*** that are not unconditionally released pursuant to the Contractor Release. The Assumed Trade Payables and Assumed Contractor Claims are collectively referred to herein as the " Assume d Payment Obligations ."

2.4 Excluded Liabilities . Notwithstanding any provision of this Agreement to the contrary (and without implication that Buyer is assuming any Liability of Seller or the Business or any Liability related to any of the Acquired Assets other than the Assumed Liabilities), neither Buyer nor any of its Affiliates is assuming, and neither Buyer nor any of its Affiliates shall be required to pay, perform or otherwise discharge, any Liabilities that are not Assumed Liabilities (collectively, the " Excluded Liabilities "), whether or not, in any particular instance, any such Liability has a value for accounting purposes, is carried or reflected on or specifically referred to in Seller's financial statements or is known or unknown. Seller shall pay, perform or otherwise discharge, or contest in good faith, the Excluded Liabilities. The Excluded Liabilities include all Liabilities of Seller, other than the Assumed Liabilities, including the following:

(a) all Liabilities to the extent relating to, arising from or incurred in connection with the Excluded Assets (including any Excluded Contracts);

(b) (i) any and all employment-related Liabilities and Liabilities in respect of all Workers through the Closing Date, including (A) any Liabilities arising from the termination of Workers, (B) any and all Liabilities under any Seller Plan or PEO Plan, (C) any and all Liabilities arising from the failure to provide continuation coverage required by Section 4980B of the Code with respect to Workers (other than the Transferred Worker) or their respective beneficiaries, (D) any and all workers' compensation and other similar claims asserted by or with respect to any Workers or their respective beneficiaries in respect of any injury or other compensable event or occupational illness or disease that occurred or is attributable to any event, state of facts or conditions that existed or occurred in whole or in part prior to or on the Closing Date and (E) any and all obligations to reimburse Workers for business expenses incurred before the Closing Date, and (ii) all post-Closing Liabilities to the extent related to Workers who are not the Transferred Worker;

(c) all Liabilities for Taxes of Seller, or that relate to or are attributable to the Acquired Assets or the Business for any Pre-Closing Tax Period, including successor liability for Taxes as a result of the application of Section 6901 of the Code or any similar provision of Law;

(d) all Liabilities related to, associated with or arising under the Assumed Contracts prior to or on the Closing Date, including those related to, associated with or arising out of any breach, nonperformance or default, or overcharge or underpayment;

(e) all Liabilities of Seller or any of its Affiliates to the extent relating to any Indebtedness of Seller or any of its Affiliates;

(f) all Liabilities related to, associated with or arising out of any Action with respect to the operation of Seller, the Business or the Acquired Assets prior to or on the Closing Date, whether such Action is brought prior to, on or after the Closing Date (other than the Assumed Contractor Claims);

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

(g) all accounts payable and accrued expenses of Seller, other than the Assumed Payment Obligations;

(h) all Liabilities pertaining to the Business and arising out of or resulting from Seller's failure to comply with bulk transfer Laws at any time;

(i) all Liabilities of Seller to any stockholder, Affiliate of any stockholder, or Affiliate of Seller;

(j) all Liabilities related to, associated with, or arising out of any Action with respect to, the Seller Sub;

(k) all Liabilities pertaining to Seller and arising out of the non-compliance with any Law prior to or on the Closing Date; and

(l) legal, accountant, brokerage, finder's fees and other fees and expenses incurred by Seller or any of its Affiliates in connection with the transactions contemplated hereby.

2.5 Consideration . Subject to the terms and conditions of this Agreement, in consideration of the transfer of the Acquired Assets under Section 2.1 , Buyer (or one or more of its designated Affiliates) shall (a) pay Seller (i) the consideration set forth below in Section 2.5(a) (the " Closing Consideration "), (ii) the Milestone Payments set forth in Section 5.13 , (iii) the Earn-Out Payments set forth in Section 5.14 , and (iv) the License/Transfer Payment set forth in Section 5.15 , (b) assume and agree to pay, perform or otherwise discharge (subject to Buyer's right to negotiate pay-off amounts of the Assumed Trade Payables as described in Section 2.3(c)), on a timely basis, the Assumed Liabilities and (c) deliver to the Escrow Agent the consideration set forth in Section 2.5(b) (collectively, the " Purchase Consideration ") as follows:

(a) At the Closing, Buyer shall (i) issue and deliver to Seller that number of fully paid and non-assessable shares of its common stock, $0.001 par value per share (the " Common Stock "), equal to $1,500,000 divided by Buyer's Average Trading Price (the " Closing Shares "). " Average Trading Price " shall mean the volume weighted average closing price of Buyer's Common Stock on the Nasdaq Stock Market over the ten (10) consecutive trading days ending on the trading day immediately prior to the Closing Date. For example, if the Average Trading Price is $2.00, 750,000 Closing Shares shall be issued and delivered to Seller. The Closing Shares must be certificated in Seller's name and will be "restricted securities" under the Securities Act.

(b) At the Closing, Seller, Buyer and Texas Capital Bank (the " Escrow Agent ") shall execute and deliver an Escrow Agreement, substantially in the form attached hereto as **Exhibit B** (the " Escrow Agreement "), and Buyer shall deposit with the Escrow Agent that number of fully paid and non-assessable shares of its Common Stock equal to $500,000 divided by the Average Trading Price (the " Escrow Shares "). For example, if the Average Trading Price is $2.00, 250,000 Escrow Shares shall be deposited with the Escrow Agent. The Escrow Shares will be (i) certificated in Seller's name, (ii) "restricted securities" under the Securities Act and (iii) held pursuant to the terms of the Escrow Agreement. The Escrow Shares will be subject to the claims of the Buyer Indemnitees to the extent and in the manner provided in the applicable provisions of ARTICLE 6 and in the Escrow Agreement.

2.6 Closing . The consummation of the transactions contemplated by this Agreement (the " Closing ") will take place at the offices of Agiletic Law Group, P.C., 15030 Avenue of Science, Suite 201, San Diego, California 92128, as promptly as practicable after the execution and delivery of this Agreement by the Parties, but no later than one (1) Business Day following the satisfaction or waiver of the conditions set forth in Sections 2.7 and 2.8 below (other than those conditions that by their nature are satisfied at Closing, but subject to the waiver or fulfillment of those conditions) or at such other time and place as the Parties may agree in writing (the " Closing Date "). The Parties acknowledge and agree that time is of the essence with respect to the Closing and (a) Buyer agrees to use reasonable best efforts to satisfy the conditions it is responsible for in Section 2.7 and (b) Seller agrees to use reasonable best efforts to satisfy the conditions it is responsible for in Section 2.8 , in each case to effectuate the Closing as soon as practicable. The effective time of the Closing, for all purposes, will be deemed to be at 12:01 a.m., Central Time, on the Closing Date.

2.7 Seller Closing Conditions; Deliveries by Buyer . The obligation of Seller to effect the Closing shall be subject to the satisfaction, fulfillment or written waiver by Seller, at or prior to the Closing of the following conditions:

(a) Buyer shall deliver a certificate, dated as of the Closing Date, duly executed by an officer of Buyer, to Seller certifying that: (i) the representations and warranties set forth in ARTICLE 4 are true and correct, (ii) Buyer has performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by Buyer (or its Affiliates) on or before Closing, (iii) all corporate action required to authorize the entry by Buyer into this Agreement and the Ancillary Agreements to which Buyer is a party and the performance by Buyer of its obligations under this Agreement and such Ancillary Agreements has been taken and is in full force and effect (including the passing of all required resolutions required to authorize the issuance of the Closing Shares and the Escrow Shares), and (iv) that attached thereto are true, correct and complete copies of the resolutions duly adopted by the Board of Directors of Buyer authorizing this Agreement, the transactions provided

(b) for by this Agreement and the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer is a party;

(c) Buyer shall deliver the Closing Shares to Seller and the Escrow Shares to the Escrow Agent;

(d) Buyer shall provide evidence reasonably satisfactory to Seller that Seller shall have no Liabilities under the Lease or with respect to the Leased Premises arising after the Closing Date (excluding Liabilities to the extent related to a breach, non-performance or default by Seller under its lease agreement, originally dated as of October 10, 2007, with Schmid-Moulton Parkway (the " Existing Lease ") occurring prior to or on the Closing Date);

(e) Buyer shall duly execute and deliver to Seller and the Escrow Agent, the Escrow Agreement;

(f) Buyer shall duly execute and deliver to Seller the Assignment and Assumption Agreement;

(g) Buyer shall duly execute and deliver to Seller each of the other applicable Ancillary Agreements;

(h) Buyer shall deliver the $*** amount owed to Contractor to the escrow agent for release to Contractor in accordance with the terms of the Contractor Release;

(i) Buyer's Common Stock has not been delisted from the NASDAQ Stock Market; Buyer has not received written notice from the NASDAQ Stock Market that Buyer is not in compliance with the listing standards and rules of the NASDAQ Stock Market; and the Escrow Shares and Closing Shares have been approved for listing of the NASDAQ Stock Market, subject to official notice of issuance;

(j) Seller shall obtained the Required Vote;

(k) Seller shall have received copies of the materials constituting the Contractor Release (including the Release), duly executed, filed and/or certified by the relevant parties, and the Release must be in a form reasonably acceptable to Seller and

(l) Seller shall receive such further instruments and documents as may be required to be delivered by Buyer or its Affiliates pursuant to the terms of this Agreement or any Ancillary Agreement and as may be reasonably requested by Seller prior to the Closing in connection with the closing of the transactions contemplated hereby or to complete the transfer of the Acquired Assets and Assumed Liabilities to Buyer.

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2.8 Buyer Closing Conditions; Deliveries by Seller . The obligation of Buyer to effect the Closing shall be s ubject to the satisfaction, fulfillment or written waiver by Buyer, at or prior to the Closing of the following conditions:

(a) Seller shall deliver a certificate, dated as of the Closing Date, signed by an officer of Seller certifying that: (i) the representations and warranties set forth in ARTICLE 3 are true and correct; (ii) Seller has performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by Seller on or before Closing and (iii) since the Effective Date, no event or events have occurred, or could be reasonably likely to occur, which, individually or in the aggregate, have, or could reasonably be expected to have, a Seller Material Adverse Effect;

(b) Buyer shall receive reasonably current certificates of good standing, including tax good standing, as applicable, of Seller from the States of Delaware and Texas;

(c) Buyer shall have received copies of the materials constituting the Contractor Release (including the Release), duly executed, filed and/or certified by the relevant parties, and the Release must be in a form reasonably acceptable to Buyer;

(d) Seller shall execute and deliver to Buyer each of the applicable Ancillary Agreements;

(e) Buyer shall receive evidence reasonably satisfactory to Buyer that each of the Required Consents has been obtained;

(f) Buyer shall receive evidence reasonably satisfactory to Buyer that the Required Vote has been obtained;

(g) Buyer shall receive evidence reasonably satisfactory to Buyer of termination of the contracts listed on Section 2.8(g) of the Disclosure Schedule;

(h) Buyer shall receive the non-competition/non-solicitation agreement, in substantially the form of **Exhibit C** hereto, duly executed by John Kerr;

(i) Buyer shall receive a certificate, dated as of the Closing Date, duly executed by an officer of Seller certifying (i) that all corporate action (including the passing of all required resolutions) required to authorize the entry by Seller into this Agreement and the Ancillary Agreements to which Seller is a party and the performance by Seller of its obligations under this Agreement and such Ancillary Agreements has been taken and is in full force and effect, (ii) that attached thereto are true, cor rect and complete copies of the certificate of incorporation and bylaws of Seller, each as amended to, and as in effect on, the Closing Date, and (iii) that attached thereto are true, correct and complete copies of the resolutions duly adopted by the board of directors of Seller and the stockholders of Seller authorizing this Agreement, the transactions provided for by this Agreement and the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Seller is a party;

(j) Bu yer shall receive appropriate termination statements or other applicable financing statement amendments under the Uniform Commercial Code in recordable form and other instruments as may be reasonably requested by Buyer evidencing the extinguishment, where applicable, of all security interests related to the Acquired Assets;

(k) Buyer shall receive a certificate of non-foreign status from Seller that meets the requirements of Treasury Regulations Section 1.1445-2(b)(2), in the form specified by Treasury Regulations Section 1.1445-2(b)(2)(iv);

(l) Since the Effective Date, no event or events shall have occurred which, individually or in the aggregate, have, or could reasonably be expected to have, a Seller Material Adverse Effect;

(m) Buyer shall have received a letter, in form and substance reasonably acceptable to Buyer, from Chiltern International Ltd. (" Chiltern "), to the effect that upon payment in full by Buyer of Seller's account payable to Chiltern in the amount of $***, Chiltern shall deliver to Buyer the complete trial master file fo r the European bioequivalency trial entitled "Protocol 0918-101" (regarding the Generic Product), including, without limitation, the clinical dataset (including SAS files), raw data, source documents, case report forms and IRB approvals;

(n) Seller shall have entered into settlement or similar agreements with each Third Party (other than the Contractor) that has filed a claim or complaint or otherwise initiated legal proceedings against Seller, which agreements shall provide that any such proceedings shall be dismissed with prejudice prior to or at the Closing (and to the extent any such Third Party maintains an Assumed Trade Payable, Buyer shall be required to pay such Assumed Trade Payable at the Closing as part of such settlement);

(o) Buyer shall have (i) entered into the Lease and (ii) received written notice from Oxford Capital, LLC (" Oxford ") pursuant to that certain Loan and Security Agreement between the Buyer and Oxford dated May 29, 2015, consenting to the transactions contemplated by this Agreement; and

(p) Buyer shall receive such further instruments and documents as may be required to be delivered by Seller pursuant to the terms of this Agreement or as may be reasonably requested by Buyer prior to the Closing in connection with the closing of the transactions contemplated hereby or to complete the transfer of the Acquired Assets and Assumed Liabilities to Buyer, including good, sufficient instruments of assignment with respect to the Assigned Intellectual Property in recordable form, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment necessary or appropriate to vest in Buyer all right, title and interest in, to and under the Acquired Assets without any Encumbrance (other than Permitted Encumbrances).

2.9 Accounting . From and after the Closing, Buyer shall have the right and authority to collect for its own account all items that are included in the Acquired Assets. To the extent that, after the Closing, (a) Buyer or any of its Affiliates receives any payment that is for the account of Seller according to the terms of this Agreement or the Ancillary Agreements, or Seller makes a payment on behalf of Buyer with Buyer's consent in respect of any Acquired Asset or any Assumed Liability, Buyer shall deliver such amount to Seller, or (b) Seller or any of its Affiliates receives any payment that is for the account of Buyer according to the terms of this Agreement or the Ancillary Agreements, or Buyer makes a payment on behalf of Seller with Seller's consent in respect of any Excluded Asset or any Excluded Liability, Seller shall deliver such amount to Buyer. All amounts properly due and payable under this Section 2.9 , if any, shall be due and payable by the applicable Party by wire transfer of immediately available funds to an account designated in writing by the other Party, and shall be delivered to the other Party within fifteen Business Days of receipt or such Party receiving notice from the other Party of payment thereof.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the exceptions set forth on the Disclosure Schedule, which exceptions shall be set forth in sections corresponding to the Sections of ARTICLE 3 , with any information disclosed in any such section of the Disclosure Schedule being deemed to be disclosed only for purposes of the corresponding Section of ARTICLE 3 , unless other Sections are appropriately cross-referenced or it is reasonably apparent from the face of the disclosure (without reference to any other document or information) that the disclosure contained in such section of the Disclosure Schedule also applies to another Section of ARTICLE 3 , Seller hereby represents and warrants to Buyer as follows:

3.1 Organization and Qualification . Seller is a corporation duly incorporated and validly existing under the Laws of the State of Delaware. Seller has all requisite corporate power and authority to own, license, use, lease and operate its properties and to carry on its business as now conducted, including the Business. Seller is duly qualified, licensed or admitted to transact business and is in good standin g in each jurisdiction in which it owns, licenses, uses, leases or operates its business, or in which the nature of its business makes such qualification necessary, except where the failure to be so qualified or be so licensed could not reasonably be expected to have a Seller Material Adverse Effect. Seller has made available to Buyer accurate and complete copies of the certificate of incorporation and bylaws of Seller, both as currently in effect, and Seller is not in default under or in violation of any provision thereof.

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

3.2 Capitalization; Subsidiaries . All of the issued and outstanding shares of capital stock of Seller have been duly authorized and are validly issued, fully paid, and nonassessable. Section 3.2 of the Disclosure Schedule sets forth a tr ue, correct and complete list of Seller's capitalization, the names of all of Seller's securityholders and the respective ownership interests of each such securityholder. Seller does not have any Subsidiaries other than Seller Sub, and does not own any se curities of or other ownership interests in any other Person . Except as set forth in Seller's certificate of incorporation and bylaws, both as currently in effect, there are no agreements to which Seller is a party or by which it is bound with respect to v oting (including voting trusts or proxies). Seller Sub has not conducted any operations since inception and (i) has no assets or Liabilities (other than customary Liabilities relating to its organization and existence that are not, individually or in the aggregate, material), (ii) has not entered into any Contracts and (iii) has not had any communications relating to, and has no rights or obligations with respect to, any regulatory matters related to the Covered Products with any Governmental Authority.

3.3 Authority .

(a) Seller has all requisite corporate power and authority to execute, deliver and perform under this Agreement and the Ancillary Agreements in which it is a party and to effect the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Agreement and such Ancillary Agreements have been duly authorized by all requisite corporate action (other than the Required Vote) by Seller. Other than (i) the approval of the board of directors of Seller, which has been obtained, and (ii) the approval of the stockholders representing the Required Vote, which approval will be obtained prior to Closing, no other corporate proceedings on Seller's or the Seller's stockholders' part are necessary to authorize the execution, delivery or performance of this Agreement or such Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby.

(b) The affirmative vote or consent in writing of (i) the holders of a majority of the outstanding capital stock of Seller, voting together as a single class on an as-converted basis, (ii) the holders of at least 67% of the issued and outstanding shares of Seller's Class A Preferred Stock, par value $0.01 per share, voting as a separate class, (iii) the holders of at least 67% of the issued and outstanding shares of Seller's Class B Preferred Stock, par value $0.01 per share, voting as a separate class, (iv) the holders of at least 67% of the issued and outstanding shares of Seller's Class C Preferred Stock, par value $0.01 per share, voting as a separate class, and (v) the holders of at least 67% of the issued and outstanding shares of Seller's Class D Preferred Stock, par value $0.01 per share, voting as a separate class, are the only votes required of the stockholders to approve the transactions contemplated by this Agreement under Law, Seller's certificate of incorporation and bylaws, both as currently in effect, or any Contract to which Seller is a party (collectively, the " Required Vote ").

(c) This Agreement has been duly executed and delivered by Seller , and this Agreement is, and the Ancillary Agreements to which Seller is a party when executed and delivered by Seller will be (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of the other parties thereto and the Required Vote has been obtained) , valid and legally binding obligations of Seller , enforceable against Seller in accordance with their respective terms, except that the enforcement hereof or there of may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to the rights of creditors and general principles of equity applicable to specific performance, injunctive relief and other equitable remedies.

3.4 Approvals; Non-Contravention .

(a) No consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Seller in connection with the execution and delivery of this Agreement or the Ancillary Agre ements to which Seller is a party or for the consummation of the transactions contemplated hereby or thereby by Seller, except for the Required Vote and the consents or approvals set forth in Section 3.4(a) of the Disclosure Schedule that are required to t ransfer or assign to Buyer (or its Subsidiaries) any of the Acquired Assets or assign the benefits of or delegate performance with regard thereto (such consents or approvals, regardless of whether or not so set forth in the Disclosure Schedule, collectively referred to herein as the " Required Consents ").

(b) Assuming that the Required Consents and Required Vote are obtained, the execution, delivery and performance of this Agreement and each Ancillary Agreement to which Seller is a party by Seller, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (i) result in a breach or violation of any provision of the certificate of incorporation, bylaws or similar organizational documents of Seller; (ii) except as set forth

o n Section 3.4(b) of the Disclosure Schedule, violate or conflict with, in any material respect, or result in a material breach of or constitute (with notice or lapse of time, or both) an occurrence of material default under any provision of, result in the acceleration or cancellation of any obligation under, give rise to any material claim, give any Person additional rights or compensation under or give rise to any right by any party to terminate or amend its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, indenture, Encumbrance, Contract, Permit, order, judgment, decree or other arrangement to which Seller is a party or by which it is bound; (iii) violate, in any material respect, any Law of any Governmental Authority having jurisdiction over Seller or the Acquired Assets ; or (iv) require Seller to obtain any consent, waiver, approval, ratification, Permit, license or other authorization of, give any notice to, or make any filing or registration with, any Governmental A uthority or other Person.

3.5 Financial Statements . Section 3.5 of the Disclosure Schedule sets forth Seller's unaudited balance sheets as of and statements of operations, statements of equity and statements of cash flows for the years ended December 31, 2014 and 2015 and its unaudited balance sheet as of September 30, 2016 (the " Balance Sheet Date ") and the related unaudited statements of operations, statements of equity and statements of cash flow for the nine-month period then-ended (collectively, the " Financial Statements "). The Financial Statements (a) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, and (b) present fairly in all material respects the financial condition and results of operations and cash flows of Seller as of the dates and for the periods indicated therein (except that the interim period financial statements do not contain footnotes and are subject to customary year-end adjustments, none of which individually or in the aggregate would be materially adverse) . There has been no change in the Seller's accounting policies since the Balance Sheet Date, except as described in the Financial Statements.

3.6 Absence of Undisclosed Liabilities; Indebtedness .

(a) Seller has no Liabilities of any nature, whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due, whether known or unknown, regardless of when asserted, except for Liabilities (i) reflected in the most recent balance sheet included in the Financial Statements (the " Balance Sheet "), (ii) that were incurred since the date of the Balance Sheet in the ordinary course of business, or (iii) under the Assumed Contracts and the Excluded Contracts, and incurred in the ordinary course of business.

(b) Section 3.6(b) of the Disclosure Schedule sets forth the aggregate amount of Indebtedness of Seller that is outstanding immediately prior to the Effective Date, including an itemized list of each component thereof and the Person to who such Indebtedness is owed.

3.7 Tax Matters .

(a) All income Tax Returns and other material Tax Returns required to be filed by or with respect to Seller have been timely filed (taking into account any applicable extensions). All such Tax Returns were c orrect and complete in all material respects. All material Taxes (whether or not shown as due on any Tax Return) that are due from Seller have been timely paid, except where any failure to timely pay any such Tax would not reasonably be expected, individually or in the aggregate, to cause a Seller Material Adverse Effect. Seller has not received written notice of a proposed claim by any Governmental Authority in any jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction with respect to Seller, the Business, any of the Acquired Assets or otherwise. Seller has not received written notice of a proposed audit by any Governmental Authority in any jurisdiction where Seller does not file Tax Returns.

(b) Seller has withheld and timely paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any Worker, creditor, security holder or other third party with respect of any Tax period up to and including the Closing Date.

(c) There are no liens for Taxes upon any of the Acquired Assets, other than liens for Taxes not yet due and payable.

(d) No audit or administrative or judicial proceeding is pending or, to the knowledge of Seller, threatened involving any Tax or Tax Return relating to Seller.

(e) Seller has not entered into any closing agreements with any Governmental Authority, and has not requested or received any Tax rulings from any Governmental Authority that relate to the Acquired Assets or the Busines s.

(f) None of the Acquired Assets are (i) tax-exempt use property under Section 168(h) of the Code, (ii) tax-exempt bond financed property under Section 168(g) of the Code, (iii) limited use property under Revenue Procedure 2001-28, (iv) treated as owned by any other Person under Section 168 of the Code, or (v) United States real property interests as described in Section 897 of the Code.

(g) Seller has not waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to any Tax assessment or deficiency (in each case, other than by reason of filing a request for an extension of time to file a Tax Return), which currently remains in effect.

(h) None of the Assumed Liabilities is an obligation to make a payment that will not be deductible under Section 280G of the Code.

3.8 ERISA and Employee Benefits .

(a) Seller entered into a Client Services Agreement (the " PEO Agreement ") with Administaff Companies II, L.P. (collectively, with any affiliates, successors or assignees thereof, the " PEO ") under which PEO and Seller (or an Affiliate thereof) were co-employers of the Workers listed in Section 3.8(a) of the Disclosure Schedule. The PEO Agreement was terminated by the PEO on or about December 12, 2016.

(b) Section 3.8(b) of the Disclosure Schedule contains a true and complete list of each material Company Plan, specifically indicating which of such plans are Seller Plans and which of such plans are PEO Plans. Seller has no obligation to change or otherwise modify any existing Seller Plan or to establish any new Plan.

(c) Copies of the following materials have been delivered or made available to Buyer with respect to each material Seller Plan, as applicable: (i) the current plan document or a written summary of such plan , (ii) each compensatory agreement between Seller or any Affiliate thereof, on the one hand, and any Worker listed in Section 3.8(a) of the Disclosure Schedule, on the other hand, (iii) the most recent determination or opinion letter from the IRS with resp ect to each Company Plan that is an Employee Pension Benefit Plan and (iv) any other documents, forms or other instruments relating to any Company Plan reasonably requested by Buyer.

(d) Each Seller Plan, and to the knowledge of Seller, each PEO Plan, has been established, maintained, operated and administered in substantial compliance with its terms and any related documents or agreements and in material compliance with all applicable Laws.

(e) Each Seller Plan that is an Employee Pension Benefit Plan inte nded to be qualified under Section 401(a) of the Code is so qualified and has been determined by the IRS to be so qualified, and each trust created thereunder has been determined by the IRS to be exempt from Tax under the provisions of Section 501(a) of th e Code, and nothing has occurred since the date of any such determination that could reasonably be expected to give the IRS grounds to revoke such determination. To Seller's knowledge, each PEO Plan that is an Employee Pension Benefit Plan intended to be qualified under Section 401(a) of the Code is so qualified and has been determined by the IRS to be so qualified, and each trust created thereunder has been determined by the IRS to be exempt from Tax under the provisions of Section 501(a) of the Code, and nothing has occurred since the date of any such determination that could reasonably be expected to give the IRS grounds to revoke such determination.

(f) Neither Seller nor any ERISA Affiliate currently has, and at no time in the past has had, an obligation to contribute to a "defined benefit plan" as defined in Section 3(35) of ERISA, a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, a "multiemployer plan" as defined in Section 3(37) of ERISA or Section 414(f) of the Code or a "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(g) With respect to each Seller Plan that is a "group health plan" subject to Section 4980B of the Code, Seller and each ERISA Affil iate has complied with the continuation coverage requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

3.9 Employment Matters .

(a) Section 3.9(a) of the Disclosure Schedule sets forth the name and current title of each Worker who is an employee, director, officer, consultant or independent contractor of the Business as of the date hereof.

(b) No Action in respect of any Worker is pending or, to the knowledge of Seller, threatened against Seller by or on behalf of any past, present or prospective Worker, including any Action related to discrimination, harassment, wrongful termination, misclassification, workers' compensation or disability. There is no violation of any employment or consulting contract between Seller, on one hand, and any Worker offered employment or a consultancy by Buyer (or its Subsidiaries) prior to the Closing. Seller and its Subsidiaries are not a party to, or otherwise bound by, any Governmental Order relating to the Workers offered employment or consultancies by Buyer (or its Subsidiaries) prior to the Closing or employment or independent contractor practices in respect of the Business, and Seller and its Subsidiaries are in compliance in all material respects with all applicable policies and agreements relating to fees, wages, hours, employment, employment practices (including meal and rest periods), classification of employees and consultants, and terms and conditions of employment or consultancies in respect of the Business. Seller or its Subsidiaries has withheld and paid to (or is holding for payment not yet due to) the appropriate Governmental Authority all amounts required by Law to be withheld from the wages or salaries due to each of its Workers. Seller or its Subsidiaries have paid in full to all of its Workers offered employment by Buyer (or its Subsidiaries) prior to the Closing all wages, salaries, bonuses, benefits, commissions and other compensation due to them or otherwise arising under any Law, plan, policy, practice, program or agreement and have not unlawfully withheld any such wages, salaries, bonuses, benefits, commissions or other compensation, and to all Workers who are not offered employment by Buyer (or its Subsidiaries) prior to the Closing, any amounts due to such Workers. All amounts that Seller or its Subsidiaries are legally or contractually required to deduct from the compensation of Workers offered employment by Buyer (or its Subsidiaries) prior to the Closing or transfer to such Workers' pension or provident, life insurance, disability insurance fund or otherwise, have been duly paid into the appropriate fund or funds, and neither Seller nor any of its Subsidiaries has any outstanding obligation to make any such transfer or provision.

(c) Seller is in compliance in all material respects with its obligations pursuant to the Worker Adjustment and Retraining Notification Act of 1988 (the " WARN Act ") and any similar Law. Except as set forth on Section 3.9(c) of the Disclosure Schedule, Seller has not had any layoffs or terminations of Workers within one year prior to the Closing Date.

(d) Neither the execution and delivery of this Agreement or the Ancillary Agreements, nor the consummation of the transactions contemplated hereby or thereby, will (either alone or in conjunction with any other event, such as termination of employment) (i) result in any material payment (including severance payments, retention bonuses, unemployment compensation payments, payments subject to Section 280G of the Code or otherwise) becoming due to any Worker under any Seller Plan or otherwise or (ii) result in any acceleration of the time of payment or vesting of any material benefits.

(e) All current Workers in the United States are, and all former Workers in the United States whose employment terminated, voluntarily or involuntarily, within the three years prior to the date of this Agreement were, legally authorized to work in the United States. Seller has completed and retained the necessary employment verification paperwork under the Immigration Reform and Control Act of 1986 (" IRCA "), for the Workers hired prior to the date hereof, and Seller has complied with anti-discrimination provisions of the IRCA.

3.10 Labor Relations. There is no unfair labor practice, charge or complaint or other proceeding pen ding or, to the knowledge of Seller, threatened against Seller or its Subsidiaries. Seller and its Subsidiaries have not engaged in any u nfair labor practices. Neither Seller nor its Subsidiaries are a party to, ha ve any material Liability with respect to or are otherwise bound by any collective bargaining agreement or other labor union contract applicable to Workers, nor do es Seller know of any activities or proceedings of any labor union or other Person to organize any such Workers. There is no labor stri ke, slowdown, work stoppage or lockout pending, or, to the knowledge of Seller, threatened, against or affecting the Business, nor, to the knowledge of Seller, has there been any such activity within the past three years.

3.11 Litigation. Except as set forth on Section 3.11 of the Disclosure Schedule, there are, and since January 1, 2014, there have been, no Actions pending, or, to the knowledge of Seller, threatened, against Seller, its Subsidiaries or any of their respective assets or properties, inclu ding any Assigned Intellectual Property, or any of their respective officers or directors (in their capacities as such). There is no judgment, decree or order against Seller, its Subsidiaries, any of their respective assets or properties or, to the knowledge of Seller, any of their respective directors or officers (in their capacities as such), that seeks to enjoin or obtain monetary damages in respect of, the consummation of the transactions contemplated hereby that would reasonably be expected to have a material adverse effect on the ability of Seller to carry out its obligations under this Agreement or the Ancillary Agreements or any other document entered into in connection herewith or therewith. There are no outstanding Governmental Orders or settlements that restrict the Business, the Acquired Assets or the Assumed Liabilities. There are no Actions by Seller pending, or that Seller intends to initiate, against any other Person.

3.12 Compliance with Laws; Business Practices.

(a) Seller is not, and in the past three years has not been, in material default under or in violation of, or been charged with any material violation of any Law (including any applicable environmental, labor, export control or foreign corrupt practices Law) to which Seller is or was subject, or by which Seller's assets or properties are or were subject or by which Seller's assets or properties are or were bound.

(b) Seller has not applied for or received, is not and will not be entitled to and is not and will not be the beneficiary of any grant, subsidy or financial assistance from any Governmental Authority.

(c) All Permits used or held for use in, and necessary for, the conduct of the Business as heretofore conducted and the Acquired Assets are listed in Section 3.12(c) of the Disclosure Schedule. All of the Permits have been legally obtained and maintained and are in full force and effect, except as otherwise set forth on Section 3.12(c) of the Disclosure Schedule. None of Seller, the Business or any of the Acquired Assets is in violation in any material respect of or is being operated in violation in any material respect of the terms of any Permit, and there is no pending or, to Seller's knowledge, threatened termination, expiration or revocation thereof.

(d) Except as set forth on Section 3.12(d) of the Disclosure Schedule, the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of any of the transactions contemplated hereby or thereby will not: (i) require any assignment, consent, waiver or ot her action in respect of any Permit; or (ii) result in the termination or modification of any Permit.

3.13 Entire Business. Other than the Existing Lease, the Permits listed on Section 3.12(c) of the Disclosure Schedule, the Seller's prior employees and consultants, cash to fund operations, and the Excluded Assets, the Acquired Assets constitute all of the assets, properties and rights related to, used in or held for use in the Business as heretofore conducted.

3.14 Transactions with Affiliates. No officer or director of Seller (nor to Seller's knowledge any immediate family member of any of such Persons), has, directly or indirectly, (a) any interest in any third party that purchases from or sells or furnishes to Seller any goods or services or (b) any interest in any Contract to which Seller is a party (except for normal compensation for services as an officer or director).

3.15 Contracts .

(a) Section 3.15 of the Disclosure Schedule sets forth, as of the date of this Agreement, a true and complete list of each Contract (whether or not such Contract is an Assumed Contract) of Seller under which Seller or any Subsidiary of Seller has ongoing executory obligations or the ability to enforce rights thereunder and that is included within any of the following categories (the " Material Contracts "):

(i) any Contract for the purchase of materials, supplies, equipment or services under which (i) Seller has made payments in excess of $10,000 during the twelve months immediately preceding the date of this Agreement an d (ii) it is reasonably anticipated that Seller will make payments in excess of $10,000 during the twelve months immediately following the date of this Agreement;

(ii) any Contract pursuant to which Seller is obligated to provide services at a price fixed (but excluding warranty and maintenance Contracts);

(iii) any warranty or maintenance Contract pursuant to which Seller is obligated to provide services at a price fixed, for which the fully burdened cost of complete performance by Seller currently exceeds or is reasonably expected by Seller to exceed such price;

(iv) any Contract that expires (or may be renewed at the option of any Person other than Seller so as to expire) more than one year after the date of this Agreement, including any Contract under wh ich Seller is required to provide support, maintenance, development or other services to any Person for a period of more than one year after the date of this Agreement;

(v) any Contract that Seller is not able to terminate at any time, without penalty, upon less than thirty-five (35) days' notice to the other party to such Contract;

(vi) any Contract containing covenants limiting the freedom of the Seller to compete or engage in any line of business or with any Person or in any geographic area or market, including any Contract granting to any Person any "most favored nation" pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights or terms;

(vii) any trust indenture, mortga ge, promissory note, loan agreement or other Contract for the borrowing of money, or any Contract for any leasing transaction of the type required to be capitalized in accordance with GAAP;

(viii) any executory Contract for any capital expenditure in exces s of $10,000 individually or $25,000 in the aggregate;

(ix) any Contract in accordance with which the Seller or any of its Subsidiaries is a lessor or lessee of any real or personal property;

(x) any Contract providing a third party with rights to, or based upon, any owned Seller Intellectual Property including any nondisclosure or confidentiality agreements;

(xi) the Inbound Licenses;

(xii) any Contract with any related party or any Person with whom Seller does not deal at arms' length;

(xiii) any Contract relating to the disposition or acquisition of assets or any interest in any business enterprise, except for the sale of products or services in the ordinary course of business;

(xiv) any Contract wi th any Governmental Authority;

(xv) any Contract under which the entering into this Agreement or the consummation of the transactions contemplated hereby would give rise to, or trigger the application of, any rights of any third party or any obligations th at would come into effect upon the consummation of the transactions;

(xvi) any Contract relating to settlement of any Action;

(xvii) any Contract for the lease of personal property or equipment; and

(xviii) any Contract with any investment banker, broker, advisor or similar Person in connection with this Agreement and the transactions contemplated hereby.

(b) Each Material Contract that is an Assumed Contract (the " Assumed Material Contracts ") is in executed, written form, and a true and complete copy of each Assumed Material Contract has been provided to Buyer. Except as set forth on Section 3.15(b)(i) of the Disclosure Schedule, neither Seller nor, to the knowledge of Seller, any other party to any Assumed Material Contract is in any material respect in violation or breach of, or in material default under, nor has there occurred an event or condition that with the passage of time or giving of notice (or both) would constitute a material default under, or permit the acceleration of any rights under or termination of, any Assumed Material Contract. Seller has not released any of its material rights under any Assumed Material Contract. Except as set forth on Section 3.15(b)(ii) of the Disclosure Schedule, neither Seller nor any counterparty to an Assumed Material Contact has given any written notice of its intention to terminate nor has otherwise sought to repudiate or disclaim any Assumed Material Contract. No counterparty to any Assumed Material Contract has notified Seller in writing of the assertion of any right to renegotiate the terms or conditions of such Assumed Material Contract.

(c) Except as set forth on Section 3.15(c)(i) of the Disclosure Schedule, each Assumed Contract is in full force and effect and constitutes a legal, valid and binding agreement, enforceable against Seller or a Subsidiary of Seller as party thereto and, to the knowledge of Seller, each other party thereto, in accordance with its terms, except that the enforcement hereof or thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to the rights of creditors and general principles of equity applicable to specific performance, injunctive relief and other equitable remedies. Except as set forth on Section 3.15(c)(ii) of the Disclosure Schedule, Seller has performed all of the material obligations required to be performed by it, and is entitled to all benefits, under the Assumed Contract.

(d) There is no dispute regarding the enforceability, validity or scope of any Assumed Contract, or performance under any such Assumed Contract, including with respect to any payments to be made or received by Seller thereunder. There are no IP Contracts included in the Assumed Contracts under which there is any dispute regarding the validity or scope o f such Assumed Contract or performance under such Assumed Contract, including with respect to any payments to be made or received by Seller thereunder. Seller has not received any written notice, and to Seller's knowledge, Seller has no reason to believe, that any counterparty to an IP Contract with Seller will not license Intellectual Property to or from Buyer immediately following the Closing Date on terms and conditions materially similar to those used in its current licenses to or from Seller.

(e) To Seller's knowledge, no director, agent, employee or consultant or other independent contractor of Seller is a party to, or is otherwise bound by, any Contract, including any confidentiality, noncompetition or proprietary rights agreement, with any other Person that in any way adversely affects (i) the performance of his or her duties for Seller or (ii) his or her ability to assign to Seller rights to any invention, improvement, discovery or information relating to the Business.

(f) Assuming the Required Consents are obtained, all Assumed Contracts will continue to be in full force and effect with respect to the Business and the Acquired Assets immediately after the consummation of the transactions contemplated hereby.

3.16 Intellectual Property .

(a) Section 3.16(a) of the Disclosure Schedule sets forth a complete and accurate list of all Registered Intellectual Property and material unregistered Trademarks and Copyrights. For each item of Registered

Intellectual Property, Section 3.16(a) of the Disclosure Sch edule indicates, as applicable, the owner of such Intellectual Property, the countries in which such Intellectual Property is patented, registered, or pending, the patent or application number, and the filing and expiration dates thereof.

(b) To the extent Seller has been granted rights to or in any Intellectual Property from a third party, (i) all such third-party rights or third-party Intellectual Property incorporated, used or embedded in the Covered Products and applicable Contracts have been identified in Section 3.16(b)(i) of the Disclosure Schedule, (ii) all such third-party rights or third-party Intellectual Property otherwise required for the manufacture, testing, validation and operations of the Covered Products, have been identified in Section 3.16(b)(ii) of the Disclosure Schedule, and (iii) all such third-party rights or third-party Intellectual Property otherwise used in or necessary to the conduct of the Business heretofore have been identified in Section 3.16(b)(iii) of the Disclosure Schedule (the third-party rights and Intellectual Property described in clauses (i), (ii) and (iii), the " Inbound Licenses "). Except as set forth in Section 3.16(b)(iv) of the Disclosure Schedule, no royalties or payments are due now or in the future, and there are no obligations to provide access to any third party to, or permit any third party to copy, modify or distribute, any Assigned Intellectual Property. Except as set forth on Section 3.16(b)(v) of the Disclosure Schedule, no Person who has licensed Intellectual Property to Seller has ownership or any exclusive rights to any improvements, derivative works and other modifications made by Seller that are included in any Covered Products.

(c) Except for the Inbound Licenses, all right, title and interest in and to all of the Covered Products and Intellectual Property practiced, used or incorporated by Seller in the Business, as applicable, and the design, development, license or sale of the Covered Products, is owned solely by Seller and is fully transferable, alienable and licensable by Seller without restriction and without payment to any Person, and Seller has the sole and exclusive rights to practice and use such Intellectual Property, free from any Encumbrances (other than Permitted Encumbrances). Except pursuant to a written IP Contract listed in Section 3.16(c) of the Disclosure Schedule, Seller has not licensed or otherwise granted any right to any Person under any Assigned Intellectual Property or has otherwise agreed not to assert any such Intellectual Property against any Person. The Intellectual Property incorporated or used in or required for the Business and Covered Products comprises entirely the Assigned Intellectual Property and the Intellectual Property licensed to the Seller under the Inbound Licenses. There is no custom Software developed by or on behalf of Seller for any third party that Seller did not retain ownership of.

(d) There is no Action that is pending or, to the knowledge of Seller, threatened that (i) challenges the rights of Seller in respect of any Intellectual Property or Covered Product, other than office actions rejecting or objecting to the rights sought during prosecution of applications for Patents, Copyright registrations and Trademark registrations, (ii) asserts that the operation of the Business is, was or will be infringing or otherwise in violation of any Intellectual Property of any third party, or (iii) claims that any default exists under any IP Contract. None of the Assigned Intellectual Property is or has been subjec t to any Governmental Order, and Seller has not been subject to any Governmental Order in respect of any other Person's Intellectual Property.

(e) All Assigned Intellectual Property, including Intellectual Property used in the Covered Products, was created solely by either (i) employees of Seller acting within the scope of their employment who have validly and irrevocably assigned, in a valid written assignment, all of their rights, including Intellectual Property rights, therein to Seller, and have waived, subject to limitations of applicable law any unassignable rights such as moral rights that they may possess in the Intellectual Property or (ii) third parties who have validly and irrevocably assigned, in a valid written assignment, all of their rights, i ncluding all Intellectual Property rights, therein to Seller, and have waived, subject to limitations of applicable law any unassignable rights such as moral rights that they may possess in the Intellectual Property.

(f) Seller has taken commercially reasonable measures to safeguard and maintain the confidentiality of all Trade Secrets that are part of the Assigned Intellectual Property. Seller has, and has been enforcing, a policy requiring each Worker to execute a proprietary information and invention ass ignment agreement substantially in Seller's standard forms, and all Workers have executed such agreements in Seller's standard forms, which forms are attached as Section 3.16(f)(i) of the Disclosure Schedule and each such executed agreement has been provid ed to Buyer. Except as set forth in Section 3.16(f)(iii) of the Disclosure Schedules, there has not been any breach by any Worker of any such agreement.

(g) No Assigned Intellectual Property was developed by or on behalf of, or using grants or any other s ubsidies of, any Governmental Authority or any university, and no government funding, facilities, then-faculty or then-students of a university, college, other educational institution or research center was used in the development of any Assigned Intellect ual Property.

(h) Seller has not transferred ownership of, or granted any exclusive license or exclusive right to use, or authorized the retention of any joint ownership rights in or to any Assigned Intellectual Property to any other Person. No Person who has licensed Intellectual Property to Seller that is or was practiced or used in the Business has ownership rights or license rights to improvements made by Seller in such Intellectual Property.

(i) None of Seller, the Covered Products or the operation of the Business as currently conducted and as has been conducted in the last six years, does not infringe, violate or misappropriate, and has not infringed, violated or misappropriated, any Intellectual Property right or other rights (including rights of privacy or publicity) of any Person, or constitutes or constituted unfair competition or trade practices under the laws of any jurisdiction. Seller has not received any written notice from any Person claiming or suggesting that Seller, the Covered Products or the operation of the Business infringes or misappropriates any Intellectual Property right of any Person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor t o the knowledge of Seller is there any Basis therefor).

(j) Each item of Registered Intellectual Property is valid, enforceable and subsisting, and all necessary documents and certificates in connection with such Registered Intellectual Property have been filed with the relevant Governmental Authorities for the purposes of prosecuting or maintaining, as applicable, such Registered Intellectual Property. To the knowledge of Seller, no facts or circumstances exist, including any information or fact that would constitute prior art and/or a public use that would render any of the Assigned Intellectual Property invalid or unenforceable. All fees, annuities, royalties, honoraria and other payments that are or were due from Seller on or before the date of this Agreement for any of the Assigned Intellectual Property or the IP Contracts have been paid. There are no actions that must be taken within sixty days after the Closing Date, including the payment of any fees or royalties under any IP Contract or the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of prosecuting, maintaining, perfecting, preserving or renewing any Registered Intellectual Property.

(k) In each instance where Seller has acquired any Assigned Intellectual Property from any Person, Seller has obtained a valid and enforceable assignment irrevocably transferring all rights in such Assigned Intellectual Property (including the right to seek past and future damages with respect thereto) to Seller and, to the maximum extent provided for by, and in accordance with, applicable Laws, Seller has recorded each such assignment with the relevant Governmental Authorities, including the United States Patent and Trademark Office, the United States Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(l) Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Buyer of any Assigned Intellectual Property or Assumed Contracts, will result, as a consequence of any actions (including the existence of an Assumed Contract) or inactions of Seller taken prior to Closing, in: (i) Seller or any of its Subsidiaries granting to any third party any right to or with respect to any Intellectual Property owned by, or licensed to, any of them (other than the assignment of the Assigned Intellectual Property to Buyer as contemplated by this Agreement); (ii) Buyer or any of its Subsidiaries being bound by, or subject to, any non compete or other material restriction on the operation or scope of their respective businesses; (iii) Buyer or any of its Subsidiaries being obligated to pay any royalties or other material amounts to any Person in excess of those payable by any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby; or (iv) the forfeiture or termination, or will give rise to a right of forfeiture or termination, of any of the Assigned Intellectual Property or any IP Contract.

(m) No Assigned Intellectual Property has been permitted to lapse or enter the public domain.

(n) Seller has (i) complied in all material respects with its published privacy policies and internal privacy policies and guidelines and, to the knowledge of Seller, all Laws relating to data privacy, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), disclosure and use of Personally Identifiable Information and (ii) taken commercially reasonable measures, including operational, managerial, physical and technical measures, to ensure that Personally Identifiable Information is protected against loss, damage, and unauthorized and unlawful access, use, modification or other misuse. There has been no loss,

damage or unauthorized access, use, unauthorized transmission, modification or other misuse of any such Personally Identifiable Information by Seller, and, to the knowledge of Seller, its contractors and agents. No Person (including any Governmental Authority) has made any claim or commenced any action with respect to loss, damage or unauthorized access, use, unauthorized transmission, modification or other misuse of any Personally Identifiable Information by Seller or any of its employees or contractors and, to the knowledge of Seller, there is no reasonable basis for any such claim or action. The execution, delivery and performance of this Agreement and the transactions contemplated hereby comply with Sel ler's applicable privacy policies and with all Laws relating to data privacy, data protection and data security (including any such Laws in the jurisdictions where the applicable information is collected). Seller has at all times made all disclosures to, a nd obtained any necessary consents from, users, customers, employees, contractors, Governmental Authorities and other applicable Persons required by Laws related to data privacy, data protection and data security and has filed any required registrations wi th the applicable data protection authority.

3.17 Restrictions on Business Activities . There is no Contract (including covenants not to compete) or Governmental Order binding upon Seller that has or could reasonably be expected to have, whether before or after consummation of the transactions contemplated hereby, the effect of prohibiting or impairing any current or future business practice of Seller, the conduct of the Business by Seller as currently conducted, the ownership by Buyer of the Acquired Asset s, the transfer of the Acquired Assets to Buyer or the conduct of the Business after the Closing by Buyer. Without limiting the foregoing, Seller has not entered into any customer or other Contract: (a) under which Seller grants "most favored nation" pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights or terms to any Person, or which restricts the right of Seller to license or provide the Covered Products in any manner (including pricing terms); (b) under which Seller is, and the Assumed Contracts will not result in Buyer being, restricted from selling, licensing or otherwise distributing any of the Assigned Intellectual Property or Covered Products to, or from providing services to, customers or potential customers, in any geographic area, during any period of time or in any segment of the market; or (c) that limits the right of Seller to purchase or otherwise obtain any software, products or services material to the development or provision of the Covered Products.

3.18 Regulatory Matters .

(a) The Business and the Covered Products are in compliance in all material respects with all current applicable Law, rules, regulations, standards, guides or orders administered, i ssued or enforced by the FDA or any other Governmental Authority having regulatory authority or jurisdiction over the Business and the Covered Products and related assets used or useful in the Business. Except as set forth in Section 3.18 of the Disclosure Schedules, as of November 13, 2015 (the date Seller ceased conducting the Business), Seller had such permits, licenses, clearances, registrations, exemptions, patents, franchises, and other approvals, consents and other authorizations issued by the appropriate domestic or foreign regional, federal, state, or local regulatory agencies or bodies necessary to conduct the Business as conducted as of such date, including, without limitation, an Investigational New Drug Application (" IND ") as required by the FDA, the EMA or any other permits, licenses, clearances, registrations, exemptions, patents, franchises, and other approvals, consents and other authorizations issued by domestic or foreign regional, federal, state, or local agencies or bodies engaged in the regulation of pharmaceuticals such as those being developed by the Seller and its Subsidiaries (collectively, the " Regulatory Permits "); the Seller is and since January 1, 2014 has been in compliance in all material respects with the requirements of the Regulatory Permits, and all of such Regulatory Permits are valid and in full force and effect; the Seller has not received any written notice of proceedings relating to the revocation, termination, modification or impairment of rights of any of the Regulatory Permits that, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to result in a Seller Material Adverse Effect; the Seller has not failed to submit to the FDA or EMA any IND, BLA, NDA or MAA necessary to conduct the Business, any such filings that were required to be made were in material compliance with applicable laws when filed, and no material deficiencies have been asserted by the FDA or EMA with respect to any such filings or submissions that were made.

(b) Seller and, to Seller's knowledge, its suppliers and manufacturers are in compliance in all material respects with all applicable Laws, rules, regulations, standards, guides or orders administered or issued by the FDA or any other Governmental Authority relating to the methods and materials used in, and the facilities and controls used for, the design, manufacture, processing, packaging, labeling, storage and distribution of the Covered Products, including applicable quality system regulations, which incorporate current Good Manufacturing Practice requirements. Further, no governmental action (excluding any legislation that has been or may be proposed) has been

taken or, to Seller's knowledge, is in the process of being take n that could slow, halt or enjoin the development and manufacturing of the Covered Products and the Business or subject the development and manufacturing of the Covered Products and the Business to regulatory enforcement action.

(c) Neither Seller nor, to Seller's knowledge its manufacturers or suppliers, has received from the FDA or any other Governmental Authority any notice of adverse findings, FDA Form 483 inspectional observations, regulatory letters, notices of violations, warning letters, Section 305 criminal proceeding notices under the Federal Food, Drug and Cosmetic Act or other similar communication from the FDA or other Governmental Authority, and there have been no seizures conducted or, to Seller's knowledge, threatened by the FDA or other Governmental Authority, and no recalls, market withdrawals, field notifications, notifications of misbranding or adulteration, or safety alerts conducted, requested or, to knowledge of Seller, threatened by the FDA or other Governmental Authority relating to the Business or to the Products. Seller has no knowledge of any facts which would furnish any reasonable basis for Seller to receive any of the communications referenced in the previous sentence.

(d) Seller has not failed to file with the applicable regulatory authorities (including, without limitation, the FDA, EMA or any other Governmental Authority performing functions similar to those performed by the FDA or EMA) any required filing, declaration, listing, registration, report or submission, except for such failures that, individually or in the aggregate, could not reasonably be expected to have a Seller Material Adverse Effect; all such filings, declarations, listings, registrations, reports or submissions were in compliance in all material respects with applicable laws when filed and no deficiencies have been asserted by any applicable Governmental Authority with respect to any such filings, declarations, listings, registrations, reports or submissions, except for any deficiencies that, individually or in the aggregate, could not reasonably be expected to have a Seller Material Adverse Effect. Seller has provided to Buyer true, accurate and complete copies of all regulatory filings, declarations, listings, registrations, reports and submissions. No filing or submission to the FDA or any other Governmental Authority that is the basis for any approval or clearance contains any material omission or material false information.

(e) The studies, tests and preclinical and clinical investigations conducted by or on behalf of the Seller were conducted in all material respects in accordance with established protocols, procedures and controls pursuant to accepted professional scientific standards and all applicable Laws and Regulatory Permits, including, without limitation, the Federal Food, Drug, and Cosmetic Act and its implementing regulations set forth at 21 C.F.R. Parts 50, 54, 56, 58, and 312; and the Seller has not received any notices or correspondence from any Governmental Authority requiring the termination,

(f) suspension or material modification of any studies, tests or preclinical or clinical investigations conducted by or on behalf of the Seller.

(g) Seller is not aware of any facts which are reasonably likely to require a change in the manufacturing, marketing classification, labeling or intended use of any Covered Products.

3.19 Brokers. No agent, broker, investment banker, financial advisor or other firm or Person is entitled to any brokerage, finder's, financial advisor's or other similar fee or commission for which Buyer or any of its Subsidiaries could become liable in connection with the transactions contemplated by this Agreement as a result of any action taken by or on behalf of Seller or any of its Subsidiaries.

3.20 Solvency.

(a) No Governmental Order has been made or petition presented, or resolution passed for the winding-up or liquidation of Seller and there is not outstanding:

(i) any petition or Governmental Order for the winding-up of Seller;

(ii) any appointment of a receiver over the whole or part of the undertaking or assets of Seller;

(iii) any petition or Governmental Order for administration of Seller;

(iv) any voluntary arrangement between Seller and its creditors (other than for certain holders of the Indebtedness to have the option to convert their indebtedness from the Company into capital stock of the Company);

(v) any distress or execution or other process levied in respect of Seller which remains undischarged; or

(vi) any unfulfilled or unsatisfied Governmental Order against Seller.

(b) The consideration received by Seller hereunder constitutes reasonably equivalent consideration for Seller's entrance into the transactions contemplated by this Agreement.

3.21 Title to, and Condition of, Acquired Assets .

(a) Seller owns, and has good and valid title to, all of the Acquired Assets free and clear of any Encumbrances other than Permitted Encumbrances and, upon consummation of the transactions contemplated hereby, assuming receipt of all Required Consents and the Required Vote, Seller will transfer to Buyer good title to all of the Acquired Assets, free and clear of any Encumbrances other than Permitted Encumbrances. Seller has not sold or otherwise transferred, or leased or licensed, any Acquired Asset to any other Person.

(b) Subject to the updating of certain qualification and validation procedures and certain recalibrations which, in the aggregate, will not involve more than $*** of expense, all tangible assets included in the Acquired Assets are (i) in good working condition and repair (other than ordinary wear and tear not caused by neglect) and (ii) usable by Buyer in the ordinary course of business to operate the Business on the Closing Date.

3.22 Environmental Matters . Seller has since January 1, 2014 been, and is, in material compliance with all applicable Environmental Laws, which compliance includes the possession and compliance by the Seller of, and maintenance of, all applicable Environmental Permits and other required authorizations from any Governmental Authority required under applicable Environmental Laws, and compliance with the terms and conditions thereof. Seller has not (a) produced, processed, manufactured, generated, transported, treated, handled, used, stored, disposed of or released any Hazardous Substances, except in compliance with applicable Environmental Laws, or (b) exposed any employee or any Third Party to any Hazardous Substances under circumstances reasonably expected to give rise to any Liability under any applicable Environmental Law. Seller has not received any notice or other communication (in writing), whether from a Governmental Authority, citizens group, employee or otherwise, that alleges (i) that Seller is not in compliance with any Environmental Law, (ii) any Liability under any Environmental Law or (iii) seeks to impose any financial responsibility for any investigation, cleanup, removal, containment or any other remediation under any Environmental Law, and, to the knowledge of Seller, there are no circumstances that could reasonably be expected to materially prevent or interfere with Seller's compliance with any applicable Environmental Law in the future. Seller is not subject to any order or other proceeding or written agreement by or with any Governmental Authority or Third Party imposing any Liability with respect to any of the foregoing. To the knowledge of Seller, there are no environmental assessments or environmental audit reports or other similar environmental studies or analyses in the possession of or, to the knowledge of Seller, reasonably available to Seller relating to the Leased Premises.

3.23 Disclosure . To the knowledge of Seller, neither this Agreement, any of the Ancillary Agreements, the schedules, attachments or exhibits hereto, nor any other written material delivered to Buyer or any of its respective directors, officers, employees, representatives or agents contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained herein or therein, taken as a whole, in light of the circumstances in which they were made, not misleading.

3.24 No Other Representations or Warranties; Disclosure . Except for the representations and warranties contained in this ARTICLE 3 (including the related portions of the Disclosure Schedule), neither the Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Seller or the Business furnished or made available to Buyer or its representatives (including, but not limited to, (a) any information regarding the Seller or the Business provided at any management presentation related to

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

the transactions contemplated by this Agreement, (b) any information communicated by or made available through the data room or due diligence process, or (c) any financial projection or forecast relating to the Business (collectively, the " Disclaimed Information ")) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in Law.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

4.1 Organization and Good Standing . Buyer is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Buyer has all requisite corporate power and authority to own, license, use, lease and operate its properties and to carry on its business. Buyer is duly qualified, licensed or admitted to transact business and is in good standing in each jurisdiction in which it owns, licenses, uses or leases property or operates its business or the nature of its business makes such qualification necessary, except to the extent that the failure to be so licensed or qualified would not reasonably be expected to have a material adverse effect upon Buyer.

4.2 Authority . Buyer has all requisite corporate power and authority to execute, deliver and perform under this Agreement and the Ancillary Agreements to which Buyer is a party and to effect the transaction contemplated hereby and thereby, and the execution, delivery and performance by Buyer of this Agreement and such Ancillary Agreements have been duly authorized by all requisite corporate action by Buyer. This Agreement has been duly executed and delivered by Buyer, and this Agreement is, and the Ancillary Agreements to which Buyer is a party (assuming that this Agreement and such Ancillary Agreements constitute valid and legally binding obligations of the other parties thereto) when executed and delivered by Buyer will be, valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except that the enforcement hereof or thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to the rights of creditors and general principles of equity applicable to specific performance, injunctive relief and other equitable remedies.

4.3 Approvals; Non-Contravention .

(a) No consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Buyer in connection with the execution and delivery of this Agreement or the Ancillary Agreements to which Buyer is a party or for the consummation of the transactions contemplated hereby or thereby by Buyer.

(b) The execution, delivery and performance of this Agreement and each Ancillary Agreement (to which Buyer is a party) by Buyer, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (i) result in a breach or violation of any provision of the certificate of incorporation, bylaws or similar organizational documents of Buyer; (ii) violate or conflict with, in any material respect, or result in a material breach of or constitute (with notice or lapse of time, or both) an occurrence of material default under any provision of, result in the acceleration or cancellation of any obligation under, give rise to any material claim, give any Person additional rights or compensation under or give rise to any right by any party to terminate or amend its obligations under, any mortgage, deed of trust, conveyance to secure debt, note, loan, indenture, Encumbrance, Contract, Permit, order, judgment, decree or other arrangement to which Buyer is a party or by which it is bound; or (iii) violate, in any material respect, any Law of any Governmental Authority having jurisdiction over Buyer.

4.4 Capitalization . Buyer has taken all actions necessary to authorize and approve the issuance of the Closing Shares and Escrow Shares to be issued under this Agreement and, upon issuance, the Closing Shares and Escrow Shares to be issued pursuant to this Agreement (including any shares of Common Stock of Buyer to be issued to Seller as Milestone Payments or Earn-Out Payments) will be validly issued, fully paid and nonassessable. There are no statutory or contractual stockholder preemptive rights or rights of refusal with respect to such issuance of the Closing Shares and Escrow Shares upon consummation of the transaction contemplated by this Agreement.

4.5 SEC Documents . Buyer has filed all required reports, schedules, forms, statements and other documents required to be filed by Buyer with the Securities and Exchange Commission (the " SEC ") since December 31, 2014 (the " SEC Documents "). As of their respective dates, the SEC Documents complied in all material respects with applicable requirements of the Secur ities Act and the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Documents. The financial statements of Buyer included in Buyer's Form 10-K for the ye ar ended December 31, 2015 and Buyer's quarterly report on Form 10-Q for the quarterly period ended September 30, 2016 comply in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect t hereto, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present the consolidated financial position of Buyer and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operation and cash flows for the periods then ending in accordance with GAAP (subject, in the case of the unaudited statements, to normal year-end audit adjustments). None of the SEC Documents contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not false or misleading.

4.6 Brokers . No agent, broker, investment banker, financial advisor or other firm or Person is entitled to any brokerage, finder's, financial advisor's or other similar fee or commission for which Seller or any of its Affiliates could become liable in connection with the transactions contemplated by this Agreement as a result of any action taken by or on behalf of Buyer or any of its Affiliates.

4.7 Sufficiency of Funds . Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to satisfy the payment obligations created by this Agreement which are payable within sixty (60) days of Closing. In addition, Buyer has access to an equity credit line under which it can raise a total of up to $20,000,000, and Buyer believes that this amount will be sufficient to develop and commercialize the Generic Product.

4.8 Going Concern . Buyer acknowledges and agrees that Seller (a) has not conducted the Business since November 13, 2015, (b) has only one employee, and (c) is not a going concern.

4.9 Independent Investigation . Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Business, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of the Seller set forth in ARTICLE 3 of this Agreement (including the related portions of the Disclosure Schedule) and is not relying on any other information (including, but not limited to, the Disclaimed Information); and (b) neither the Seller nor any other Person has made any representation or warranty as to Seller, the Business or this Agreement, except as expressly set forth in ARTICLE 3 of this Agreement (including the related portions of the Disclosure Schedule). Without limiting the foregoing, Buyer has not relied upon, and the Seller should not have any liability with respect to, the Disclaimed Information.

ARTICLE 5
COVENANTS

5.1 Access to Information . After the Closing, Seller and Buyer each shall, and shall cause its respective Affiliates to, provide to each other and to their respective Representatives, upon request, reasonable access for inspection and copying of all information and documents existing as of the Closing Date and relating to the Business, the Acquired Assets or the Assumed Liabilities, and shall use commercially reasonable efforts to make its respective personnel reasonably available for interviews, depositions and testimony in any legal matter concerning transactions contemplated by this Agreement, the operations or activities relating to the Business, the Acquired Assets or the Assumed Liabilities and as otherwise may be necessary or desirable to enable the Party requesting such assistance to: (a) comply with any reporting, filing or other requirements imposed by any Governmental Authority, (b) assert or defend any Action or allegation in any Action, other than Actions or allegations that one Party to this Agreement has asserted against the other Party, or (c) subject to clause (b) above, perform its obligations under this Agreement. The Party requesting such information or assistance shall reimburse the other Party for all reasonable out-of-pocket costs and expenses incurred by such Party in providing such information and in rendering such assistance. The access to

information and documents contemplated by this Section 5.1 shall be during normal business hours and upon reasonable prior notice and shall be subject to such reasonable limi tations as the Party having custody or control thereof may impose to preserve the confidentiality of information contained therein. Until the first anniversary of the Closing Date, no Party will destroy or otherwise dispose of any such books, records and o ther data unless such Party shall first offer in writing to surrender such books, records and other data to Buyer (if Seller seeks to undertake the destruction or disposition) or Seller (if Buyer seeks to undertake the destruction or disposition) and the o fferee does not agree in writing to take possession thereof during the ten-day period after such offer is made.

5.2 Confidentiality .

(a) All obligations of Buyer and its Affiliates under the Mutual Non-Disclosure Agreement, dated as of July 14, 2016, by and between Seller and Buyer (the " Confidentiality Agreement ") in respect hereof or the information contained herein and the information delivered to Buyer or its authorized Representatives pursuant hereto relating to the Business, the Acquired Assets or th e Assumed Liabilities shall terminate simultaneously with the Closing.

(b) From the Effective Date, Seller shall hold in strict confidence from any Person and shall not, directly or indirectly, disclose, divulge or make any use of, and shall cause their respective Affiliates and their and their Affiliates' respective Representatives to hold in strict confidence from any Person and to not, directly or indirectly, disclose, divulge or make any use of, any Confidential Information, including disclosure to journalists, customers, vendors, employees and consultants of Seller, participants or analysts in the industry in which the Business is conducted or through social media; provided that Seller may disclose the existence and the terms of this Agreement to (i) its stockholders as is necessary to solicit and obtain their approval of this Agreement and the transactions contemplated herein and (ii) certain holders of Seller's Indebtedness as is necessary to solicit their approval to convert such Indebtedness into capital stock of the Seller; provided further that such stockholder and holders of Seller's Indebtedness agree to keep the existence and terms of this Agreement confidential. As used in this Agreement, the term " Confidential Information " shall mean and include all information included in the Business Records or relating to the Acquired Assets, the Assumed Liabilities or the Business (including all Trade Secrets within the Assigned Intellectual Property and any information of a Party that is or would have been "Confidential Information" as defined in and subject to the Confidentiality Agreement) and the existence and terms of this Agreement.

(c) Notwithstanding the foregoing, nothing herein shall restrict Seller, its Affiliates or their respective Representatives from using or disclosing any Confidential Information to the extent that (i) such Confidential Information is or becomes (through no improper action or inaction by Seller, any of its Affiliates or their respective Representatives) generally available to the public after the Closing, or (ii) such disclosure is required by Law or by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process, as long as Seller, its Affiliates or their respective Representatives, as permitted by Law, promptly notify Buyer of such requirement so that Buyer has an opportunity to seek, at its expense, an appropriate protective or similar order.

(d) Seller , on behalf of itself, its Affiliate s and their respective Representatives, acknowledges that in view of the nature of the Confidential Information and the objectives of the Parties in entering into this Agreement, the restrictions contained in this Section 5.2 are reasonable and necessary t o protect the legitimate business interests of Buyer after the Closing, and that any breach or threatened breach of the provisions of this Section 5.2 will cause irreparable injury to Buyer for which an adequate monetary remedy does not exist. Accordingly, in the event of any such breach or threatened breach of this Section 5.2 , Buyer shall be entitled, in addition to the exercise of other remedies, to seek and obtain injunctive relief, without the proof of actual damage or any bond or similar security bei ng posted, restraining Seller, any Affiliate of Seller or their respective Representatives from committing such breach or threatened breach.

5.3 Commercially Reasonable Efforts . From time to time after the Closing, without additional consideration, each of the Parties shall (or, if appropriate, cause their respective Affiliates to) execute and deliver such further documents and instruments and take such other actions as may be necessary to make effective the transactions contemplated by this Agreement and the Ancillary Agreements. If any Party hereto (or any of its Affiliates) shall following the Closing have in its possession any asset or right that under this Agreement should have been delivered to the other, such Party shall promptly deliver or caused to be delivered such asset or right to the other without charge or further consideration.

5.4 Tax Matters .

(a) Any transfer, sales, use, recording, value-added or similar Taxes (including any registration and/or stamp Taxes, levies and duties) that may be imposed by reason of the sale, assignment, transfer and delivery of the Acquired Assets to Buyer or its permitted assignees, the assumption by Buyer or its permitted assignees of the Assumed Liabilities or in connection with the Ancillary Agreements (" Transfer Taxes ") shall be the responsibility of and timely paid by Buyer, and Buyer, at its own expense, shall timely file all Tax Returns required to be filed in connection with the payment of such Taxes. The Parties hereto and their Affiliates shall cooperate in connection with the filing of any Tax Return for Transfer Taxes including joining in the execution of such Tax Return for Transfer Taxes and in obtaining all available exemptions from such Transfer Taxes. If Seller is required by Law to remit payment for Transfer Taxes, Buyer shall promptly reimburse Seller for such Transfer Taxes actually paid by Seller.

(b) Seller shall be responsible for and will perform all Tax withholding, payment and reporting duties with respect to any wages and other compensati on to any Worker in connection with the operation or conduct of the Business for any period or portion thereof ending prior to or on the Closing Date, and Buyer shall be responsible for and will perform all Tax withholding, payment and reporting duties wit h respect to any wages and other compensation paid by Buyer to any Transferred Worker in connection with the operation or conduct of the Business after the Closing Date.

(c) In connection with the preparation of Tax Returns, audit examinations and any administrative or judicial proceedings relating to Taxes, Seller, on the one hand, and Buyer, on the other hand, shall cooperate fully with each other, including the furnishing or making available at reasonable times of records, personnel or other materials necessary for the preparation of such Tax Returns, the conduct of audit examinations or the defense of claims by Governmental Authorities as to the imposition of Taxes. Materials provided pursuant to this Section 5.4 (c) shall be "Confidential Information."

(d) Within 120 days of the Closing Date, Buyer shall deliver to Seller a schedule setting forth the allocation of the Purchase Consideration (taking into account any adjustments thereto) among the Acquired Assets and other covenants or agreements set forth in this Agreement and/or the Ancillary Agreements (the " Allocation Schedule "). Buyer agrees to prepare the Allocation Schedule in good faith. Seller and Buyer each shall report the federal, state, local and foreign income and other Tax consequences of the transactions contemplated by this Agreement in a manner consistent with the Allocation Schedule. Except as otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any comparable provision of state, local or foreign Law), neither Buyer nor Seller (nor any permitted assignee of Buyer) shall take a position inconsistent with such allocations on any Tax Return (including any forms required to be filed pursuant to Section 1060 of the Code), or otherwise. Within a reasonable period before the due date of such statements, Seller and Buyer shall cooperate with the other in prep aring IRS Form 8594 or any equivalent statements required by any Governmental Authority charged with collection of any Tax.

(e) Notwithstanding any other provision of this Agreement, all payments under this Agreement will be made without deduction or withh olding for or on account of any Taxes.

(f) All real property Taxes, personal property Taxes, and similar ad valorem obligations imposed on or with respect to the Acquired Assets (" Property Taxes ") for any Tax year period beginning on or before the Closing Date and ending after the Closing Date shall be prorated between Seller and Buyer as of the close of business on the Closing Date on a daily basis and such proration shall be deemed final. Seller shall be responsible for all such Property Taxes accruing under such daily proration methodology during any period up to and including the Closing Date. Buyer shall be responsible for all such Property Taxes accruing under such daily proration methodology during any period beginning on the day after the Closing Date. With respect to Property Taxes described in this Section 5.4 (f), Seller shall prepare and timely file all Tax Returns filed or required to be filed before the Closing Date with respect to such Property Taxes and Buyer shall prepare and timely file all Tax Returns due and payable after the Closing Date with respect to such Property Taxes. If one Party remits to the appropriate Governmental Authority payment for Property Taxes, which are subject to proration under this Section 5.4 (f) and such payment includes the other Party's share of such Property Taxes, such other Party shall promptly reimburse the remitting Party for its share of such Property Taxes. Any such reimbursements shall be made within five Business Days of the Party making such payment to the appropriate Governmental Authority; provided that, the Party requesting reimbursement of Property Taxes shall provide the other Party with a written notice indicating the amount due and the computation thereof.

5.5 Non-Competition; Non-Solicitation; Non-Di sparagement .

(a) Seller understands that Buyer shall be entitled to protect and preserve the going-concern value of the Business to the extent permitted by Law and not otherwise provided pursuant to this Agreement and that Buyer would not have entered into this Agreement absent the provisions of this Section 5.5 . Therefore, from the Closing Date until the fifth anniversary of the Closing Date (the " Restricted Period "), Seller shall not, and shall cause the individuals on Section 5.5(a) of the Disclosure Schedule (the " Restricted Persons ") not to, directly or indirectly, engage in a Competitive Business Activity (as defined below) anywhere in the world (the " Restricted Territory "). For all purposes hereof, the term " Competitive Business Activity " shall mean directly or indirectly: (i) engaging in, or managing, advising, instructing or directing persons engaged in, any business that creates, designs, develops, manufactures, markets, licenses, distributes, sells, implements, supports or otherwise exploits any service or product which is substitutable for or includes the same or substantially similar functionality (or intended functionality) as the Covered Products; (ii) acquiring or having an ownership interest in any entity that creates, designs, develops, manufactures, markets, licenses, distributes, sells, implements or supports any product or service which is substitutable for or includes the same or substantially similar functionality (or intended functionality) as the Covered Products (except for passive ownership of (A) Buyer or a Successor Entity, as applicable (B) one percent or less of any entity whose securities have been registered under the Securities Act or Section 12 of the Securities Exchange Act of 1934, as amended (the " Exchange Act ") or whose e quity securities are listed on any other major national or international stock exchange (a " Public Company ") or (C) one percent or less of any entity other than a Public Company); (iii) participating in any capacity (whether as an employee, agent, consultant, advisor, independent contractor, proprietor, partner, officer, director, joint venturer or otherwise) in the financing, operation, management or control of any firm, partnership, corporation, entity or business that creates, designs, develops, manufactures, licenses, markets, distributes, sells, implements or supports any product or service which is substitutable for or includes the same or substantially similar functionality (or intended functionality) as the Covered Products; or (iv) utilizing their k nowledge of the Business or their relationships with customers, suppliers or others to (A) engage or facilitate others to engage in any facet of the Business in the Restricted Territory; or (B) induce or encourage such customers, suppliers or others to cease buying from, supplying to or otherwise working with, the Buyer.

(b) During the Restricted Period, Seller and the Restricted Persons shall not, directly or indirectly, solicit or recruit (as an employee or contractor) any individual who is known by Seller or such Restricted Person to be an employee or contractor of Buyer or permitted assignees or induce any such individual who is known by Seller or such Restricted Person to be an employee or contractor of Buyer or any of its Affiliates or permitted assignees to terminate such individual's employment or independent contractor relationship with Buyer or any of its Affiliates or their permitted assignees or successors.

(c) Neither Seller nor any of its officers or members of its Board of Directors (as currently constituted) shall make, directly or indirectly, any written or oral communications that would reasonably be considered to be disparaging of Buyer in any respect, including, but not limited to, communications with respect to Buyer's business, technology, products, prospects, executives, officers, directors, former executives, consultants, contractors or agents. Nothing in this Section 5.5(c) shall preclude the giving of truthful testimony in any deposition or judicial or administrative proceeding. Moreover, nothing in this Section 5.5(c) applies to communications made to immediate family members of Seller's officers or Board of Directors (provided that such family members do not use such communications for purposes of making disparaging comments or communications about Buyer), or communications by authorized representatives of Seller to Seller's attorneys, or to pleadings or other documents in any proceeding to enforce this Agreement

(d) Neither Buyer nor any of its officers, members of its Board of Directors or Affiliates shall make, directly or indirectly, any written or oral communications that would reasonably be considered to be disparaging of Seller in any respect, including, but not limited to, communications with respect to Seller's executives, officers, directors, former executives, consultants, contractors or agents. Nothing in this Section 5.5(d) shall preclude the giving of truthful testimony in any deposition or judicial or administrative proceeding. Moreover, nothing in this Section 5.5(d) applies to communications made to immediate family members of Buyer's officers or Board of Directors (provided that such family members do not use such communications for purposes of making disparaging comments or communications about Seller), or communications by authorized representatives of Buyer to Buyer's attorneys, or to pleadings or other documents in any proceeding to enforce this Agreement. Nothing in this Section 5.5(d) will prevent Buyer from making public disclosures which, based on the advice of Buyer's legal counsel, are required to be made pursuant to applicable securities laws.

(e) Selle r and Buyer recognize that the Laws and public policies of various countries, states, citi es or other political subdivisions may differ as to the validity and enforceability of covenants similar to those set forth in this Section 5.5 . The covenants contained in this Section 5.5 shall be construed as a series of separate covenants, one for each country, province, state, city or other political subdivision. Except for geographic coverage, each such separate covenant shall be deemed identical in terms to the covenant contained in this Section 5.5 . It is the intention of the Parties that the provisions of this Section 5.5 be enforced to the fullest extent permissible under the Laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modificati on to conform to such Laws or policies) of any provision of this Section 5.5 (or part thereof) shall not render unenforceable, or impair, any other provision of this Section 5.5 . Seller, on behalf of itself and its Representatives and the Restricted Person s, expressly authorizes the enforcement of the covenants set forth in this Section 5.5 by Buyer and any Affiliates of Buyer, the permitted assigns of Buyer and any Affiliates of Buyer and any successors of Buyer and any Affiliates of Buyer. If the provisio ns of this Section 5.5 are deemed to exceed the time, geographic or scope limitations permitted by applicable Law, then such provisions shall be reformed to the maximum time, geographic or scope limitations, as the case may be, permitted by applicable Law.

(f) Seller acknowledges that (i) the goodwill associated with the Business prior to the Closing is an integral component of the value of the Business to Buyer and is reflected in the Purchase Consideration, and (ii) each agreement of Seller set forth in this Section 5.5 is necessary to preserve the value of the Business for Buyer following the transactions contemplated by this Agreement. Seller also acknowledges that the limitations of time, geography and scope of activity agreed to in this Agreement are reasonable and necessary to protect the legitimate business interests of Buyer, which include the interests of Buyer to protect (A) valuable Confidential Information, (B) substantial relationships with customers, and (C) customer goodwill associated with the ongoing business, because, among other things, (1) Seller and Buyer are engaged in a highly competitive industry, (2) the Competitive Business Activities are substantially similar to the Business and (3) Seller has access to, and is expected to continue to have access to, trade secrets and know-how of the Business.

(g) Seller and Buyer recognize, acknowledge and agree that any remedy at Law for any breach of the provisions of this Section 5.5 would be inadequate. Accordingly, Seller agrees that if Seller breaches, or threatens to breach, any provision of this Section 5.5 , Buyer will have available, in addition to any other right or remedy otherwise available, the right to seek preliminary and permanent injunctive relief and other equitable relief to prevent or curtail any such breach or threatened breach and to specific performance of any covenant contained in this Section 5.5 , in each case without the proof of actual damage or any bond or similar security being posted, in order that the breach or threatene d breach of such provisions may be effectively restrained. Seller further agrees that it will not assert as a claim or defense in any Action to enforce any provision hereof that Buyer has or had an adequate remedy at law. No specification in this Section 5.5 of a specific legal or equitable remedy shall be construed as a waiver or prohibition against the pursuit of other legal or equitable remedies in the event of a breach or threatened breach of this Section 5.5 .

5.6 Assignment of Rights .

(a) Nothing in this Agreement nor the consummation of the transactions contemplated hereby shall be construed as an attempt or agreement to assign any Acquired Asset, including any Assumed Contract, if such assignment, without the consent of a third party, would constitute a breach or result in the contravention or cancellation of such Acquired Asset (" Nonassignable Assets ") unless and until such consent shall have been obtained. Seller will use commercially reasonable efforts to obtain the consent of the other party to any such Acquired Asset or any claim, right or any benefit arising thereunder for the assignment thereof to Buyer. In the event consents to the assignment thereof cannot be obtained prior to the Closing, such Nonassignable Assets shall be held, as of and from the Closing Date, by Seller in trust for Buyer and the covenants and obligations thereunder shall be performed by Buyer, at Buyer's sole cost and in Seller's name, and all benefits and obligations existing thereunder shall be for the account of Buyer. Sel ler shall take or cause to be taken, at Buyer's sole cost, such actions in its name or otherwise as Buyer may reasonably request so as to provide Buyer with the benefits of the Nonassignable Assets and to effect collection of money or other consideration t hat becomes due and payable under the Nonassignable Assets, and Seller shall promptly pay over to Buyer all money or other consideration received by it in respect of all Nonassignable Assets. As of and from the Closing Date, Seller authorizes Buyer, except to the extent prohibited by the terms of the Nonassignable Assets, to perform all the obligations and/or receive all the benefits of Seller under the Nonassignable Assets. Seller shall not modify or amend any Assumed Contract included in the Nonassignable Assets without the prior written consent of Buyer.

(b) The provisions of Section 5.6 (a) shall not limit, modify or otherwise affect any representation or warranty of Seller under this Agreement. Accordingly, nothing in Section 5.6 (a) shall affect Buyer's other rights under this Agreement. In the event that it is learned by either Party hereto following the execution and delivery of this Agreement that Section 3.16(a) of the Disclosure Schedule failed to include or describe any additional Intellectual Prop erty, causing the representations and warranties made by Seller in Section 3.16(a) not to be true and correct in all respects as of the date hereof, then (i) such Party shall promptly thereafter notify the other Party, and (ii) Seller shall take such actio ns as reasonably requested by Buyer in writing to ensure that Buyer is entitled to the same rights with respect to such additional Intellectual Property that Buyer would have enjoyed if such additional Intellectual Property had always been included or desc ribed in such applicable Section(s) of the Disclosure Schedule.

5.7 Transferred Worker .

(a) Buyer (or one or more of its permitted assignees) has made an offer to employ the individual listed on Section 5.7 of the Disclosure Schedule as employee of Buyer (or one or more of its permitted assignees) effective upon the Closing. The Seller consents to such individual becoming employed by Buyer (or one or more of its permitted assignees). Such Individual, if he accepts such offer and commences employment with Buyer (or one or more of its permitted assignees) upon or within 30 days after the Closing, is referred to as the " Transferred Worker " as of the effective day of his employment with Buyer (or its applicable permitted assignees).

(b) Seller shall pay the T ransferred Worker any and all compensation and other employment benefits due to such Transferred Worker through the Closing Date, including any payments with respect to paid time off, severance or prior notice of termination.

(c) Buyer shall not assume any Seller Plan or any Liabilities thereunder.

(d) Seller will, at its own expense, give all notices and other information required to be given by Seller or its Affiliates to the Workers, any labor or trade union, works council or any other employee representative body, and any applicable Governmental Entity under the WARN Act, the National Labor Relations Act, the Code and other Laws in connection with the execution of this Agreement or the consummation of the transactions contemplated hereby.

(e) Nothing in this Agreement shall require Buyer or its permitted assignees or Affiliates to employ or engage the Transferred Worker on anything other than an at-will basis, terminable at any time with or without cause, except if and to the extent otherwise required by Law. Nothing in this Agreement, whether express or implied, shall be construed to (1) create any third-party beneficiary or other rights in any Worker of the Seller or its Affiliates (including any dependent or beneficiary thereof) or any other Person (including any union, works council, or collective bargaining representative or any participant in any Seller Plan (or any dependent or beneficiary thereof)), (2) interfere with the rights of Buyer to amend or terminate any employee benefit plans at any time (to the extent permitted by applicable Law), discharge or discipline the Transferred Worker, or change the terms of employment or engagement of the Transferred Worker (to the extent permitted by applicable Law), or (3) amend any employee benefit plan of Buyer or its permitted assignees or Affiliates.

5.8 Bulk Sale Filings . Buyer hereby waives, in connection with the transactions contemplated by this Agreement, compliance with the "bulk sales" provision of Article 6 of the Uniform Commercial Code as it is in effect in the states where Seller owns assets to be conveyed to Buyer (or any of its Subsidiaries) hereunder and other similar bulk transfer notice provisions.

5.9 Public Announcements . Seller shall not issue, and Seller shall cause its Affiliates t o refrain from issuing, any press release or other public announcement concerning the ex istence of this Agreement, the terms of the transactions cont emplated by this Agreement or otherwise relating to the subject matter of this Agreement without the prior written consent of Buyer.

5.10 Distribution .

(a) Before Seller distributes any portion of the Purchase Consideration to any holder of capital stock of Seller, Seller shall either set aside a sufficient amount of the Purchase Consideration or use the proceeds that Seller receives from the Purchase Consideration or otherwise make arrangements to (i) repay all known Liabilities including its Liabilities under Excluded Contracts, but excluding Assumed Liabilities, and (ii) establish adequate reserves for all contingent, conditional or unmatured Liabilities, but excluding Assumed Liabilities, and for Actions that have been made known to Seller or that have not arisen but are reasonably likely to become known or to arise after the date of dissolution, liquidation or wind-up of Seller. Seller further agrees not to file a voluntary bankruptcy petition for at least 90 days following the Closing Date.

(b) Section 5.10 of the Disclosure Schedule sets forth (i) an estimated balance sheet of the Seller as of December 31, 2016 (without giving effect to the transactions contemplated hereby) (the " Closing Date Balance Sheet ") that (A) has been prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Financial Statements and (B) represents the Seller's good faith, best estimate, based on information known to Seller as of December 3 1, 2016, of the items included therein, (ii) the aggregate amount of Indebtedness of Seller that is outstanding as of December 31, 2016, including an itemized list of each component thereof and the Persons to whom such Indebtedness is owed, (iii) a list of all known Liabilities of Seller that are not set forth on the Closing Date Balance Sheet, and (iv) for each Liability referenced on Section 5.10 of the Disclosure Schedule, Seller's intentions with respect to the discharge of or reservation for such Liability, including the source of funds required for, and the proposed timing of, each such discharge or reservation. Seller shall discharge or reserve for the Liabilities set forth on Section 5.10 of the Disclosure Schedule in accordance with the arrangements set forth thereon.

(c) In the event that Seller winds up its business and dissolves or liquidates, it shall do so only in accordance with all applicable Laws, including the Laws of the State of Delaware.

5.11 Attorney-in Fact . Seller, on behalf of itself and its Affiliates, hereby constitutes and appoints Buyer and its permitted assigns and successors the true and lawful attorneys of Seller and its Affiliates, as applicable, with full power of substitution, in the name of Seller and its Affiliates, as applicable, but on behalf of and for the benefit of Buyer and its Affiliates, to: (a) demand and receive from time to time any and all of the Acquired Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (b) institute, prosecute, compromise and settle any and all Actions that Buyer in its sole discretion may deem proper in order to collect, assert or enforce any claim, right, title or interest of any kind in or to the Acquired Assets; and (c) defend or compromise any or all Actions in respect of any of the Acquired Assets. Buyer shall be entitled to retain for its own account any amounts collected pursuant to the foregoing powers, including any amounts payable as interest in respect thereof. S eller hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason.

5.12 Commercially Reasonable Efforts; Progress Reports .

(a) (i) Buyer will, or (ii) if Buyer or its successors sells, assigns or otherwise transfers the rights to a Covered Product to an Affiliate or Third Party, or such Affiliate or Third Party sells, assigns or otherwise transfers the rights to a Covered Product to another Third Party (in each case, a " Successor Entity "), the Successor Entity will, use Commercially Reasonable Efforts to develop and commercialize each of the Covered Products. Without limiting any other provision of this Agreement, Buyer or Successor Entity, as applicable, shall, on a semi-annual basis, provide Seller a written report (each, a " Progress Report "), with the first Progress Report being provided to Seller on the last day of the month in which the six-month anniversary of the Closing Date occurs and each subsequent Progress Report to follow every six months thereafter, describing in reasonable detail: (i) Buyer's, Successor Entity's, or Third Party (Sub)Licensee's, as applicable, progress in the development or commercialization of the Covered Products during the preceding six (6) month period (including a summary of total investments, both expense and capital expenditures, in developing and commercializing each Covered Product during such period), all clinical studies completed or then in progress, any material regulatory activities, pre-launch activities and commercial launch of each Covered Product, and (ii) Buyer's, Successor Entity's, Third Party (Sub)Licensee's, as applicable, then-current schedule of forecasted development and commercialization plans for each Covered Product for the following six (6) month period. All contents of all Progress Reports shall constitute Confidential Information of Buyer or Successor Entity, as applicable, and shall be subject to the confidentiality and non-use provisions set forth in this Agreement.

(b) Buyer agrees and covenants that in the event that Buyer or its successors or any Successor Entity sells, assigns or otherwise transfers the rights to a Covered Product to a Third Party, as a condition to any such sale, assignment or transfer, such Third Party shall enter into a written agreement whereby it assumes all of the obligations of Buyer, Buyer's successors, or Successor Entity, as applicable, set forth in this Section 5.12 (including the obligations to use Commercially Reasonable Efforts to develop and commercialize each of the Covered Products and to provide the Progress Reports to Seller with respect to the Covered Products) and in Sections 5.16 and 5.17 , and shall provide Seller with a written acknowledgment of such written agreement. Buyer shall give Seller written notice promptly after consummation of such sale, assignment or other transfer.

(c) Buyer agrees and covenants that in the event that Buyer, Buyer's successors, or any Successor Entity, as applicable, licenses or sublicenses the rights to a Covered Product to a Third Party (the " Third Party (Sub)Licensee "), the Third Party (Sub)Licensee shall enter into a written agreement (the " Written Agreement ") with Buyer, Buyer's successors, or any Successor Entity, as applicable, whereby such Third Party (Sub)Licensee agrees in writing to be bound by terms and conditions that (i) are consistent with the terms and conditions set forth in Sections 5.12 , 5.13 , 5.14 , 5.16 and 5.17 of this Agreement, (ii) provide Seller with the same rights (other than the right to be a party to, or named as an express third party beneficiary in, such Written Agreement) and payments if such rights to the Covered Product had not been licensed and Buyer, Buyer's successors or any Successor Entity, as applicable, were developing and commercializing such Covered Product to the same extent as such Third Party (Sub)Licensee, (iii) provide Buyer, Buyer's successors, or any Successor Entity with rights to enforce such Third Party (Sub)Licensee's obligations under such Written Agreement and (iv) do not otherwise limit, restrict or diminish Seller's rights under this Agreement, and Buyer or its successors or any Successor Entity, as applicable, shall remain responsible for the performance of this Agreement and the performance of such Third Party (Sub)Licensee hereunder, and shall cause such Third Party (Sub)Licensee to allow Buyer or its successors or any Successor Entity, as applicable, to comply with all of the terms and conditions of this Agreement (including, without limitation, the terms and conditions set forth in Sections 5.12 , 5.13 , 5.14 , 5.16 and 5.17 of this Agreement). Buyer or any Successor Entity shall provide Seller written notice promptly after the consummation of any such license or sublicense, which notice shall contain a copy of such Written Agreement. Buyer, Buyer's successors or any Successor Entity, as applicable, shall, at their expense, take all actions reasonably requested by Seller to enforce their rights under such Written Agreement to permit Seller to receive the benefits and payments it is entitled to under Sections 5.12 , 5.13 , 5.14 , 5.16 and 5.17 of this Agreement.

5.13 Milestone Payments; Generic Product .

(a) Commercialization Milestones . Buyer or Successor Entity, as applicable, shall pay to Seller in United States dollars the amounts set forth in the following tables (each, a " Commercialization Milestone Payment, ") upon the Annual Net Sales of the Generic Product first meeting or exceeding the corresponding amounts set forth in the following tables (each, a " Commercialization Milestone Event "):

Global Commercialization Milestone Event	Commercialization Milestone Payment
Global Annual Net Sales of the Generic Product meets or exceeds $***	$***
Global Annual Net Sales of the Generic Product meets or exceeds $***	$***
Global Annual Net Sales of the Generic Product meets or exceeds $***	$***

European Commercialization Milestone Event	Commercialization Milestone Payment
If the Generic Product is the First EMA Generic and Annual Net Sales in the European Union meet or exceed $*** on or prior to the fifth (5 th) anniversary of the first commercial sale made in the European Union	$***
If the Generic Product is a Following EMA Generic and Annual Net Sales in the European Union meet or exceed $*** on or prior to the fifth (5 th) anniversary of the first commercial sale made in the European Union	$***

North America Commercialization Milestone Event	Commercialization Milestone Payment
If Annual Net Sales in North America meet or exceed $*** on or prior to the third (3 rd) anniversary of the first commercial sale of the Generic Product made in North America	$***
If Annual Net Sales in North America meet or exceed $*** prior to the fifth (5 th) anniversary of the first commercial sale of the Generic Product made in North America	$***

For clarity, if more than one Commercialization Milestone Event is achieved in a particular year, all corresponding Commercialization Milestone Payments for each such Commercialization Milestone Event so achieved in such year shall be due and paid as described in Section 5.13 (a); however, it is understood that each Commercialization Milestone Payment shall be payable only once upon the first achievement of the applicable Commercialization Milestone Event.

(b) The Commercialization Milestone Payments set forth in Section 5.13 (a) shall each be due and payable to Seller within thirty (30) days of the completion of Buyer's or Successor Entity's, as applicable, financial statements for the calendar year in which Annual Net Sales achieve the specified target, *provided* that in any event Buyer or Successor Entity, as applicable, shall pay any Commercialization Milestone Payment due within ninety (90) days after the Buyer's or Successor Entity's, as applicable, calendar yearend during which such Commercialization Milestone Event(s) was achieved. Each Commercialization Milestone Payment to Seller shall be accompanied with reasonably detailed information about the calculation of the Commercialization Milestone Payment. Buyer, Buyer's successors, or any Successor Entity, as applicable, shall not take or omit to take any action with the intention (or primary purpose) of reducing, delaying or avoiding payment of a Commercialization Milestone Payment.

*** Portions of this page have been omitted pursuant to a request for Confidential Treatment and filed separately with the Commission.

(c) Buyer agrees and covenants that in the event that Buyer or its succes sors or any Successor Entity sells, assigns or otherwise transfers the rights to the Generic Product to a Third Party, as a condition to any such sale, assignment or transfer, such Third Party shall enter into a written agreement whereby it assumes all of the obligations of Buyer, Buyer's successors, or Successor Entity, as applicable, set forth in this Sections 5.13 (including the obligations to make the Commercialization Milestone Payments and the reporting obligations set forth in the last sentence of Se ction 5.13(b)) and in Sections 5.16 and 5.17 , and shall provide Seller with written acknowledgment of such written agreement. Buyer shall give Seller written notice promptly after the consummation of such sale assignment or other transfer.

5.14 Earn-Out Payments .

(a) During the Generic Earn-Out Period, Buyer or Successor Entity, as applicable, shall pay to Seller in United States dollars earn-out payments (the " Generic Earn-Out Payments ") equal to *** percent (***%) (the " Initial Earn-Out Factor ") of global Net Sales of the Generic Product, provided, however, the Initial Earn-Out Factor shall be reduced from *** percent (***%) to *** percent (***%) for global Net Sales in the European Union if the Generic Product is not the First EMA Generic. For avoidance of doubt, regardless if the Generic Product is the First EMA Generic or a Following EMA Generic, the Initial Earn-Out Factor shall be *** percent (***%) for any and all Net Sales of the Generic Product anywhere in the ROW. " Generic Earn-Out Period " means the period commencing upon the date that Buyer or Successor Entity, as applicable, has achieved aggregate global Net Sales of the Generic Product of at least $*** (the " Earn-Out Commencement Date ") and ending upon the earlier of (i) the date that is ten (10) years after the Earn-Out Commencement Date or (ii) the date on which Seller has received an aggregate of $100,000,000 in total Earn-Out Payments from global Net Sales of the Covered Products (the " Earn-Out Cap "). Buyer, Buyer's successors, or any Successor Entity, as applicable, shall not take or omit to take any action with the intention (or primary purpose) of reducing, delaying or avoiding payment of a Generic Earn-Out Payment.

(b) During the Patented Earn-Out Period, Buyer or Successor Entity, as applicable, shall pay to Seller in United States dollars earn-out payments (the " Patented Earn-Out Payments " and, together with the Generic Earn-Out Payments, collectively, the " Earn-Out Payments ") equal to *** percent (***%) of global Net Sales of the Patented Product. " Patented Earn-Out Period " means, on a country-by-country basis, a period commencing upon the date that Buyer or Successor Entity, as applicable, has achieved aggregate global Net Sales of the Patented Product of at least $***, and ending, on a country-by-country basis, upon the earlier of (i) the expiration of the last Valid Claim relating to the Patented Product in such country or (ii) the date on which Seller has received aggregate Earn-Out Payments equal to the Earn-Out Cap. For the avoidance of doubt, in the event Buyer or Successor Entity, as applicable, in its discretion, combines the Patented Product with radiotherapy, Earn-Out Payments will be due under this Section 5.14(b) from the global Net Sales of such product. Buyer, Buyer's successors, or any Successor Entity, as applicable, shall not take or omit to take any action with the intention (or primary purpose) of reducing, delaying or avoiding payment of a Patented Earn-Out Payment.

(c) The following adjustments shall be made, with respect to the Generic Product, on a country-by-country basis, to the payment obligations described in Section 5.14(a) above. If, on a county-by-country basis, it is in Buyer's good faith opinion necessary for Buyer to license one or more patents (" IP Rights ") from one or more Third Parties to research, develop, have developed, make, have made, use, have used, offer for sale, have offered for sale, sell, have sold, import, have imported or otherwise exploit or commercialize the Generic Product in such country, then Buyer may, in its sole discretion, negotiate and obtain a license under such IP Right(s) (each such Third Party license referred to herein as an " Additional Third Party Generic License "). The portion of any Generic Earn-Out Payment associated with Net Sales in a country whereby the Buyer obtained an Additional Third Party Generic License in such country shall be reduced by the amount of royalties (the " ATPGL Royalties ") Buyer paid for such Additional Third Party Generic License. For the avoidance of doubt, any ATPGL Royalties Buyer pays for an Additional Third Party Generic License may only be deducted from a Generic Earn-Out Payment once. Subject to the foregoing, Buyer or Successor Entity, as applicable, may carry over and apply any ATPGL Royalties that are paid for in a calendar quarter, but are not applied against a Generic Earn-Out Payment in such calendar quarter, to any subsequent calendar quarter(s), provided that Buyer shall apply any available ATPGL Royalties at the first opportunity to do so (i.e., the Buyer will not hold ATPGL Royalties in reserve and carry them over to subsequent calendar quarters when they could otherwise have been applied to reduce Generic Earn-Out Payments then due).

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(d) The following adjustments shall be made , with respect to the Patented Product on a country-by-country basis, to the payment obligations described in Section 5.14 (b) above. If, on a country-by-country basis, it is in Buyer's good faith opinion necessary for Buyer to license one or more IP Right s from one or more Third Parties in order to research, develop, have developed, make, have made, use, have used, offer for sale, have offered for sale, sell, have sold, import, have imported or otherwise exploit or commercialize the Patented Product in suc h country, then Buyer may, in its sole discretion, negotiate and obtain a license under such IP Right(s) (each such Third Party license referred to herein as an " Additional Third Party Patent License "). The portion of any Patented Earn-Out Payment associa ted with Net Sales from a country whereby the Buyer obtained an Additional Third Party Patent License in such country shall be reduced by an amount equal to *** percent (***%) of royalties (the " ATPPL Royalties ") Buyer paid for such Additional Third Party Patent License. For the avoidance of doubt, *** percent (***%) of any royalties Buyer pays for an Additional Third Party Patent License may only be deducted from a Patent Earn-Out Payment once and Buyer shall be solely responsible for the other *** percen t (***%) of the royalties Buyer pays for an Additional Third Party Patent License. Subject to the foregoing, Buyer or Successor Entity, as applicable, may carry over and apply any ATPPL Royalties that are paid for in a calendar quarter, but are not applie d against a Patented Earn-Out Payment in such calendar quarter, to any subsequent calendar quarter(s), provided that Buyer shall apply any available ATPPL Royalties at the first opportunity to do so (i.e., the Buyer will not hold ATPPL Royalties in reserve and carry them over to subsequent calendar quarters when they could otherwise have been applied to reduce a Patent Earn-Out Payments then due).

(e) After the first commercial sale of a Covered Product and through the later of the expiration of the Patented Earn-Out Period or Generic Earn-Out Period, Buyer or Successor Entity, as applicable, shall furnish to Seller a written report, within forty-five (45) days after the end of each calendar quarter (or portion thereof if the Earn-Out Period terminates during a calendar quarter), reporting (i) the amount of gross sales of the Covered Products (on a Covered Product-by-Covered Product, country-by-country and sales region-by-sales region basis), (ii) the amount of global Net Sales of the Covered Products (on a Covered Product-by-Covered Product, country-by-country and sales region-by-sales region basis), (iii) the amount of royalties that Buyer paid for any Additional Third Party Generic License and Additional Third Party License (on a Covered Product-by-Covered Product, country-by-country and sales region-by-sales region basis) and (iv) Earn-Out Payments due to Seller for such calendar quarter (or portion thereof).

(f) Buyer agrees and covenants that in the event that Buyer or its successors or any Successor Entity sells assigns or otherwise transfers the rights to a Covered Product to a Third Party, a condition to any such sale assignment or transfer will be that Buyer, Buyer's successors, or Successor Entity, as applicable, shall enter into a written agreement whereby it assumes all of the obligations of Buyer, Buyer's successors, or Successor Entity, as applicable, set forth in this Sections 5.14 (including the obligations to make the Earn-Out Payments and the reporting obligations set forth in Section 5.14(e)) and in Sections 5.16 and 5.17 , and shall provide Seller with written acknowledgment of such written agreement. Buyer shall give Seller written notice promptly after the consummation of such sale, assignment or other transfer.

5.15 License/Transfer Payment .

(a) If Buyer or its Affiliates enter into a Qualifying Transaction, Buyer shall pay to Seller the following payment in United States dollars (the " License/Transfer Payment "):

(i) Buyer shall pay to Seller *** percent (***%) of the first $*** of the License/Transfer Fee, then

(ii) Buyer shall pay to Seller *** percent (***%) of that portion of the License/Transfer Fee that exceeds $***;

provided that in no event shall the License/Transfer Payment to Seller pursuant to this Section 5.15(a) exceed $50,000,000.

(b) The License/Transfer Payment shall be paid by Buyer to Seller within thirty (30) days of Buyer or its Affiliates receiving the corresponding License/Transfer Fee from the Third Party in the Qualifying Transaction. If Buyer or its Affiliates receive the License/Transfer Fee in installments, then Buyer shall pay to Seller within thirty

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(30) days after receipt of each installment, Seller's proportionate amount of such installment payment, in each case based upon the percentages (and subject to the caps) above. Buyer shall deliver with any License/Transfer Payment a calculation of the License/Transfer Fee (or installment thereof) and the License/Transfer Payment. Buyer or its Affiliates shall not take or omit to take any action with the intention (or primary purpose) of reducing, delaying or avoiding payment of the License/Transfer Payment.

(c) Buyer or its Affiliates shall give Seller written notice of any Qualifying Transaction at least thirty (30) days prior to the consummation of such Qualifying Transaction.

5.16 Sales of Competing Product . If Buyer or Successor Entity, as applicable, commences commercial sales of a Competing Product prior to the satisfaction of the Earn-Out Cap, then fifty percent (50%) of all net sales (calculated using the same criteria utilized in the definition of Net Sales) of the Competing Product will be deemed Net Sales of the Generic Product and included in the calculation of the Commercialization Milestone Payments pursuant to Section 5.13 (a) and the Generic Earn-Out Payments pursuant to Section 5.14 . The preceding sentence shall not apply in the event of a Generic Product Failure. " Generic Product Failure " means (i) any failure to receive EMA market authorization for the Generic Product by the seven-year anniversary of the Closing Date, other than as the result of the failure by Buyer or Successor Entity, as applicable, to use Commercially Reasonable Efforts to obtain EMA market authorization by such deadline; or (ii) the failure to generate at least $*** in global Net Sales within the first two (2) full calendar years following Buyer's or Successor Entity's, as applicable, receipt of EMA marketing authorization for the Generic Product, despite use of Commercially Reasonable Efforts to achieve such Net Sales.

5.17 Audit and Dispute Rights .

(a) Buyer or Successor Entity, as applicable, hereby grants to Seller the right to examine, no more than once per calendar year, (each, an " Audit ") Buyer's or Successor Entity's, as applicable, books of account and records at the location of such records in the United States during Buyer's or Successor Entity's, as applicable, normal business hours, on prior written notice of at least ten (10) days (the " Audit Notice ") for any period within the preceding five (5) Calendar Years for any of the following purposes: (i) to verify whether Buyer or Successor Entity, as applicable, has complied with the covenants set forth in Section 5.12 , (ii) to verify the amount of global Annual Net Sales with respect to the Covered Products, (iii) verify the net sales of a Competing Product, (iv) to verify whether a Commercialization Milestone Payment is due, (v) to verify the accuracy of any Commercialization Milestone Payment, (vi) to verify whether an Earn-Out Payment is due, (vii) to verify the accuracy of any Earn-Out Payment, including, without limitation, the amount of any reductions thereto as the result of an Additional Third Party Patent License or Additional Third Party Generic License, (viii) to verify whether a License/Transfer Payment is due, and (ix) to verify the accuracy of any License/Transfer Payment.

(b) For the purpose of conducting an Audit, Seller may hire one or more auditors, attorneys or other Representatives of its choosing to assist in such Audit, provided, that such auditors, attorneys or other Representatives must ent er into the Buyer's and Successor Entity's, as applicable, standard form of confidentiality agreement. Results of any Audit shall be made available to both Seller and Buyer and Successor Entity, as applicable. The independent certified public accountant shall disclose to Seller only the amounts that the independent certified public accountant believes to be due and payable hereunder to Seller, details concerning any discrepancy from the amount paid and the amount due, and shall disclose no other information revealed in such Audit.

(c) Each Audit shall be conducted at the Seller's sole expense, unless such Audit discloses an underpayment of more than ten percent (10%) from the amount of total payments due for the period under Audit and such underpayment amount is at least the amount of the fees incurred in connection with such Audit, in which case the Buyer or Successor Entity, as applicable, shall reimburse Seller the full costs of such Audit within thirty (30) days of Seller's written request for such reimbursement.

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(d) In the event that Seller does not agree with the amount of any Commercialization Milestone Payment, Earn-Out Payment or License/Transfer Payment (the " Disputed Item "), Seller shall be entitled to give the Buyer or Successor Entity, as applicable, written notice (a " Dispute Notice ") of such d isagreement. In the event that Seller delivers a Dispute Notice, Seller, on the one hand, and Buyer or Succ essor Entity, as applicable, on the other hand, shall, for a period of not less than sixty (60) days after delivery of the Dispute Notice, attempt to mutually determine the amount of the Disputed Item being audited and mutually determine any adjustments to such Disputed Item. In the event that no agreement can be reached by Seller and Buyer or Successor Entity, as applicable, as to the calculation of the Disputed Item within sixty (60) days after delivery of the Dispute Notice, then for a period of thirty (30) days following the end of such sixty (60) day period either party shall have the right to cause the determination of the Disputed Item for the period in dispute to be submitted to arbitration by the San Diego, California office of one of the following firms or their respective successors, so long as such firm or its successors is not the current principal regularly engaged outside accountant to Seller or Buyer or Successor Entity, as applicable: Deloitte & Touche LLP, KPMG LLP, Ernst & Young LLP and P ricewaterhouseCoopers LLP, or any successor firm to any of the foregoing (collectively, the " Accountants "); provided, however, that the engagement and charge of the Accountants shall be limited to determining the Disputed Item for the period in dispute, an d, without limiting the foregoing, the Accountants shall not be entitled to determine any other matter. Seller and Buyer or Successor Entity, as applicable, shall jointly select which of the Accountants will perform the calculation within thirty (30) days after Seller and Buyer or Successor Entity, as applicable, determine that they are unable to settle the amount independently. The Accountant selected in accordance with the foregoing sentence shall be responsible for the determination of the Disputed Ite m and shall be referred to herein as the " Appraiser ." The Appraiser shall determine the amount of the Disputed Item for the period in dispute within the limitations set forth above within ninety (90) days after the date of such Appraiser's engagement. An y Disputed Item determined by an Appraiser in accordance with this Section 5.17 (d) shall be deemed to be the final amount of the Disputed Item for the applicable period. If the determination of the Appraiser results in any additional payment being due to Seller, Buyer or Successor Entity, as applicable, shall make such payment on or prior to the tenth (10 th) Business Day following the Appraiser's determination. Seller and Buyer or Successor Entity, as applicable, will each pay their own respective fees an d expenses (including any fees and expenses of their Representatives) in connection with the resolution of disputes pursuant to this Section 5.17 (d) and the fees and expenses of the Appraiser shall be paid by Seller, on the one hand, and the Buyer or Succe ssor Entity, as applicable, on the other hand, in proportion to the difference between the amount of the Disputed Item for the period in dispute determined by the Appraiser and the respective amounts of the Disputed Item for the period in dispute asserted by each party at the time of the initial referral of the dispute to the Appraiser.

5.18 Mail . Following the Closing, Seller shall deliver or cause to be delivered to Buyer all mail received by Seller relating to the Business or any of the Acquired Assets or Assumed Liabilities, whether addressed to Seller or Buyer. In no event shall Seller open any mail addressed to Buyer.

5.19 Registration Rights .

(a) Buyer shall use its best efforts to file within thirty (30) days of the Closing Date with the Securities and Exchange Commission, and thereafter use its commercially reasonable efforts to cause to be declared effective as soon as practicable a Registration Statement on an appropriate form under the Securities Act relating to the offer and sale of the Registrable Securities by the Holders thereof from time to time (hereinafter, the " Shelf Registration ").

(b) Buyer shall use its commercially reasonable efforts to keep the Registration Statement continuously effective under the Securities Act until such time as all of the Registrable Securities covered by the Registration Statement have been sold thereunder or pursuant to Rule 144 of the Securities Act (" Rule 144 ") or may be sold without restriction pursuant to Rule 144 including, without limitation, volume limitations and other restrictions of Rule 144 (the " Shelf Registration Period ").

(c) All expenses (other than the Holders' selling expenses) incident to Buyer's performance of or compliance with this Section 5.19 , including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for Buyer and independent certified public accountants, underwriters (excluding fees, discounts and commissions) and other persons retained by Buyer (all such expenses being herein called " Registration Expenses "), shall be borne by Buyer, except that all fees and disbursements of counsel for any Holder shall be borne by such Holder.

(d) " Holder " means (i) Seller in its capacity as a holder of recor d of Registrable Securities, and (ii) any transferee of Registrable Securities from Seller to a Third Party.

(e) " Registrable Securities " means: (i) the Closing Shares once issued, (ii) the Escrow Shares, and (iii) any other shares of Common Stock of Buyer issued to Seller pursuant to the terms of this Agreement, and in each case, together with any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities upon expiration of the Shelf Registration Period.

(f) " Registration Statement " means any registration statement of Buyer which covers all of the Registrable Securities pursuant to the provisions of this Agreement, including the prospectus, amendments, and supplements to the Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference in the Registration Statement.

(g) Seller agrees and acknowledges that it will not transfer or sell more than: (i) 150,000 shares of Registrable Securities in any calendar week or (ii) 600,000 shares of Registrable Securities in any calendar month, and that it will promptly notify Buyer following any such transfer or sale of Registrable Securities.

5.20 Destruction of Assigned Intellectual Property . Within ten Business Days of receiving written confirmation from Buyer that the Assigned Intellectual Property has been received by Buyer, Seller shall provide Buyer with written confirmation that all copies of any Assigned Intellectual Property in Seller's possession after the Closing have been destroyed.

5.21 Withholding Taxes . In the event that Buyer or Successor Entity, as applicable, reasonably determines after consultation with Seller that it is required by Law to withhold tax from any Commercialization Milestone Payment or Earn-Out Payment to Seller — Buyer or Successor Entity, as applicable, shall be entitled to deduct and withhold such tax and shall pay the amounts of such tax to the proper tax revenue authority in a timely manner in accordance with Law unless and until an exemption or reduction is granted by the applicable tax or revenue authority or Seller establishes that the applicable payment is no longer subject to withholding or is subject to a reduced rate of withholding. Each of Buyer or Successor Entity, as applicable, and Seller agrees to cooperate in claiming exemptions from such deductions or withholdings under any agreement or treaty from time to time in effect. If neither Party is permitted to claim an exemption from such deductions or withholdings, Buyer or Successor Entity, as applicable, may deduct the amount of tax required to be paid (which may include a reduced amount if a reduction is granted by the applicable tax or revenue authority) from the payment to be made by Buyer or Successor Entity, as applicable, to Seller after notice in writing to Seller of such withholding. Within a reasonable amount of time after making such deduction, Buyer or Successor Entity, as applicable, shall provide to Seller copies of any tax filing or other documentation evidencing such withholding. Any tax withheld shall be treated as having been paid by Buyer or Successor Entity, as applicable, to Seller for all purposes of this Agreement. If it is determined by the applicable tax or revenue authority that Buyer or Successor Entity, as applicable, failed to make a withholding tax payment in connection with a Commercialization Milestone Payment, Earn-Out Payment or License/Transfer Payment, Seller will promptly pay to Buyer or Successor Entity, as applicable, the amount due to enable Buyer or Successor Entity, as applicable, to make the missed payment, provided that Buyer notifies Seller of such failure within 30 days of receiving notice of such failure from the applicable tax or revenue authority.
If it is determined that Buyer or Successor Entity, as applicable, overpaid withholding tax and Buyer's or Successor Entity's, as applicable, assistance is required to apply for a refund to the applicable tax or revenue authority, Buyer or Successor Entity, as applicable, shall promptly apply for such refund and furnish such information or assistance as may be required to Seller, and any such refund shall be paid to the Seller within 5 days of receipt thereof.

5.22 Offer to Redeem Closing Shares and Escrow Shares . At any time following the Closing Date, Buyer may offer to purchase from Seller, and Seller may, but has no obligation to, sell to Buyer, that number of Closing Shares or Escrow Shares, and at the price per Closing Share or Escrow Share, as the Buyer and Seller mutually agree.

ARTICLE 6
SURVIVAL; INDEMNIFICATION

6.1 Indemnification by Seller . Subject to the limitations set forth in Section 6.4 , from and after the Closing, Seller shall indemnify , defend and hold harmless Buyer and its Affiliates and their respective officers, directors, employees and agents (collectively, the " Buyer Indemnitees ") from and against any and all Losses that are paid, suffered or incurred by any Buyer Indemnitee to the extent that such Losses arise out of, result from, are based upon or relate to:

(a) any actual inaccuracy in any representation or warranty made by Seller in this Agreement or the Ancillary Agreements;

(b) any actual failure by Seller to perform or fulfill any of the covenants or agreements required to be performed by Seller under this Agreement or the Ancillary Agreements;

(c) the Excluded Assets and Excluded Liabilities;

(d) the failure of Seller to comply with any bulk sales or similar Laws in connection with the transactions contemplated hereby;

(e) the ownership or operation of the Acquired Assets or the conduct of the Business on or prior to the Closing Date; or

(f) any ac tual fraud by Seller.

6.2 Indemnification by Buyer . Subject to the limitations set forth in Section 6.4 , from and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and its Affiliates and their respective officers, directors, employees and agents (collectively, the " Seller Indemnitees ") from and against any and all Losses that are paid, suffered or incurred by any Seller Indemnitee to the extent that such Losses arise out of, result from, are based upon or relate to:

(a) any actual inaccuracy in any representation or warranty made by Buyer in this Agreement or the Ancillary Agreements;

(b) any actual failure by Buyer to perform or fulfill any of the covenants or agreements required to be performed by Buyer under this Agreement or the Ancillary Agreements;

(c) the Assumed Liabilities;

(d) the ownership or operation of the Acquired Assets or the conduct of the Business after the Closing Date; or

(e) any actual fraud by Buyer.

6.3 Survival . The representations and warranties of the Parties set forth in this Agreement and the right to assert a claim for indemnification with respect thereto pursuant to this ARTICLE 6 shall survive the execution and delivery of this Agreement and the Closing and continue in full force and effect until the fifteen month anniversary of the Closing Date (the "Initial Survival Period"), provided that (i) the representations and warranties set forth in Section 3.3 (*Authority*), Section 3.4 (*Approvals; Non-Contravention)* , Section 3.16 (*Intellectual Property*), Section 3.19 (*Brokers*), Section 4.2 *(Authority),* Section 4.3 *(Approvals; Non-Contravention),* Section 4.6 *(Brokers)* , Section 4.8 *(Going Concern)* and Section 4.9 *(Independent Investigation)* shall survive until the five-year anniversary of the Closing Date and (ii) the representations and warranties set forth in Section 3.21 (a) (*Title to, and Condition of, Acquired Assets) and* Section 4.4 *(Capitalization)* shall survive indefinitely. No claim for indemnification pursuant to Section 6.1 or Section 6.2 based on the breach of a representation or warranty may be asserted after the date on which such representation or warranty expires (the " Survival Expiration Date "). A claim for indemnification pursuant to Section 6.1 or Section 6.2 based on the breach of a representation or warranty that is asserted in reasonable detail prior

to the Survival Expiration Date fo r such representation or warranty may be maintained until such claim is finally resolved in accordance with this ARTICLE 6 . The covenants and other agreements in this Agreement shall survive the execution and delivery of this Agreement and the Closing and continue in full force and effect thereafter for long as the covenants and other agreements remain executory in nature.

6.4 Limitations on Liability .

(a) Cap . The aggregate liability of Seller to Buyer Indemnitees pursuant to Section 6.1(a) shall be limited to $3,900,000; provided , however , that the limitations set forth in this Section 6.4(a) shall not be applicable to any Losses resulting from either (i) fraud or (ii) any actual inaccuracy in the representations and warranties set forth in Section 3.21 (a) (*Title to, and Condition of, Acquired Assets)* .

(b) Insurance Proceeds . Notwithstanding anything contained herein to the contrary, the amount of any Losses incurred or suffered by the Buyer Indemnitees shall be calculated after giving effect to any insurance proceeds actually received by the Buyer Indemnitees with respect to such Losses (as well any Tax benefits realizable by the Buyer Indemnities) with respect to such Losses, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims and related increases in insurance premiums or other chargebacks. Buyer Indemnitees shall exercise commercially reasonable efforts to obtain such insurance proceeds. If any insurance proceeds are received by the Buyer Indemnitees with respect to any Losses after the Seller has made a payment to the Buyer Indemnitees with respect thereto, the Buyer Indemnitees shall pay to Seller the sum of the amount of such proceeds up to the amount of the Seller's payment to the Buyer Indemnitees less any of Buyer Indemnitee's related costs and expenses of recovering such insurance proceeds, including the aggregate cost of pursuing any related insurance claims and related increases in insurance premiums or other chargebacks (the " Net Insurance Repayment "), provided however, that in the event that the original payment to a Buyer Indemnitee was in the form of Escrow Shares, instead of a cash payment to Seller, Buyer agrees that, so long as the Escrow Shares have not been released from escrow pursuant to the terms of the Escrow Agreement, Buyer shall issue and deliver to the Escrow Agent a number of shares of Common Stock of Buyer equal to the Net Insurance Repayment Amount, with the valuation of such shares being issued equal to the valuation of the Escrow Shares previously obtained by the Buyer Indemnitee (for example, if an original Claim led to the release of 100,000 Escrow Shares valued at $1.00 per share, and the Net Insurance Repayment Amount is $85,000 then Buyer shall issue Seller 85,000 shares of Buyer Common Stock).

(c) Disclaimer of Special Damages . Each Party waives any rights to assert or receive any indirect, consequential, special, exemplary or punitive damages (including any damages on account of lost profits, diminution in value or opportunities or business interruption or based on multiples) suffered or incurred by such Party as a result of the breach by the other Party of any of its representations, warranties or obligations hereunder.

6.5 Assertion of Claims; Payment of Claims .

(a) Claim Certificate . In connection with any claim for reimbursement of Losses subject to indemnification under this ARTICLE 6 , the Party seeking reimbursement (the " Claimant ") shall prepare, and deliver to the Party from which reimbursement is sought (the " Respondent "), a certificate (a " Claim Certificate "): (i) stating that the Claimant has paid or sustained Losses subject to indemnification pursuant to this ARTICLE 6 and (ii) specifying in reasonable detail the Loss included in the amount so stated.

(b) Resolution of Claims . As soon as practicable following the delivery of a Claim Certificate, Seller and Buyer shall attempt to agree upon the rights of the respective parties with respect to each claim set forth therein. If Seller and Buyer should so agree, a written memorandum setting forth such agreement shall be prepared and signed by Seller and Buyer, and a copy of such memorandum shall be delivered to the Claimant and the Respondent. Such memorandum and the agreements contained therein shall be final and binding on Seller, Buyer, the Claimant, the Respondent and all other Persons having any interest therein.

(c) Failure to Resolve Objections . If Seller and Buyer cannot agree upon the rights of the respective parties with respect to each of the claims in a Claim Certificate within sixty (60) days after delivery of the Claim Certificate (as such period may be extended only by mutual written agreement of Seller and Buyer, by giving notice thereof to the Claimant and the Respondent), the Claimant may pursue any and all legal remedies that may be available to it.

(d) Entitlement to Indemnity . Subject to the limitations set forth in Section 6.4 , the Claimant shall be entitled to receive payment for all amounts that the Respondent (i) has agreed in wri ting to pay, (ii) is obligated to pay pursuant to a written memorandum between Seller and Buyer pursuant to Section 6.5 (b) or (iii) has been found liable to pay pursuant to a final, non-appealable order of a court of competent jurisdiction.

(e) Payment of Claims . Subject to Sections 6.6 , and 6.7 , the Respondent shall pay all amounts to which a Claimant is entitled to receive pursuant to this ARTICLE 6 promptly upon demand of the Claimant by certified check or wire transfer of immediately available funds, as the Claimant may specify (or alternatively, Claimant may reduce cash payments otherwise owed by Claimant to Respondent under this Agreement); provided, however, that Seller may, at its sole option, elect to satisfy an indemnification claims hereunder by returning (i) Escrow Shares and Closing Shares (with the Closing Shares and any Escrow Shares that have not been converted to Converted Property to be valued as provided in Section 6.6(a)) equal to the indemnification claim or (ii) Converted Property (with the Converted Property to be valued as provided in Section 6.6(b) .

6.6 Recourse to Escrow Shares / Set Off .

(a) Subject to Section 6.6(b) , for so long as the Escrow Agreement is in full force and effect and to the extent that sufficient funds are held in the escrow account governed by the Escrow Agreement, a Buyer Indemnitee shall make a claim first against the Escrowed Shares (with the Escrow Shares to be valued at the volume weighted average closing price of Buyer's Common Stock on the Nasdaq Stock Market over the ten (10) consecutive trading days ending on the trading day immediately prior to the date that Buyer notifies Seller of the claim for indemnification) or Converted Property (with the Converted Property to be valued as provided in Section 6.6(b)), as applicable, in accordance with the Escrow Agreement for reimbursement of any amount that a Buyer Indemnitee is entitled to receive pursuant to Section 6.5 (d), and only to the extent that such entitlement is not satisfied from the Escrow Shares or Converted Property, as applicable, will such Buyer Indemnitee be entitled to reduce cash payments otherwise owed by Buyer to Seller under this Agreement or a direct payment as provided in Section 6.5(e) . Escrow Shares and Converted Property will only be available for the satisfaction of claims that are made by a Buyer Indemnitee prior to the expiration of the Initial Survival Period. Once all such claims made by a Buyer Indemnitee prior to the expiration of the Initial Survival Period have been satisfied or otherwise resolved, the Escrow Agent shall promptly deliver all remaining Escrow Shares or Converted Property, if any, to Seller.

(b) In the event that the Escrow Shares are converted or exchanged into (i) some other form of property following the Closing Date by virtue of a merger, acquisition or other transaction involving Buyer (e.g., into cash or the equity of a Third Party) or (ii) into cash pursuant to Section 5.22 (such other form of property or cash the " Converted Property "), Seller authorizes the Escrow Agent to hold the Converted Property in escrow pursuant to the terms of the Escrow Agreement. For purposes of satisfying an obligation to indemnify a Buyer Indemnitee following the conversion or exchange of Escrow Shares into Converted Property, the Converted Property will be valued as follows: (1) any cash held in escrow will be valued at its face value; (2) if the Converted Property in escrow is not traded on a nationally recognized market or exchange in the United States, such Converted Property will be valued at the corresponding value of the Escrow Shares (determined as of their date of conversion) which were converted or exchanged into such Converted Property (for example, if the value on the date of conversion of one Escrow Share was $2.00, and such Escrow Share was converted into two shares of a Third Party, then, for purposes of satisfying Seller's indemnification obligations in this ARTICLE 6 the value of each share of the Third Party will be deemed to be $1.00; or (iii) if the Converted Property in escrow is traded on a nationally recognized market or exchange in the United States, such Converted Property will be valued at the volume weighted average closing price of such security on such exchange over the ten (10) consecutive trading days ending on the trading day immediately prior to the date that Buyer Indemnitee notifies Seller of the claim for indemnification. With respect to Converted Property which is utilized to satisfy Seller's obligations to indemnify a claim brought by a Buyer Indemnitee, such Converted Property will be transferred to Buyer or its assignee, designee or transferee, and Seller agrees to execute all documents, and take all other actions, reasonably necessary to facilitate such transfer.

6.7 Exclusive Remedy . Except for claims for specific performance of the terms of this Agreement as further described in Section 8.9 or claims based on fraud, the indemnification provisions set forth in this ARTICLE 6 will be the sole and exclusive remedy of the Buyer Indemnities with respect to any and all claims from and after the Closing relating to the subject matter of this Agreement.

6.8 Investigation . No indemnitee's rights under this ARTICLE 6 will be adversely affected by any investigation conducted, or any knowledge acquired or capable of being acquired, by such indemnitee at any time, whether before or after the execution or delivery of this Agreement or the Closing. No indemnitee shall be required to show reliance on any representation, warranty, certificate or other agreement in order for such indemnitee to be entitled to indemnification hereunder.

6.9 Character of Indemnity Payments . The Parties hereby acknowledge and agree that any indemnification payments made in accordance with ARTICLE 6 shall be treated for all Tax purposes as an adjustment to the Purchase Consideration, unless otherwise required by Law (including by a determination of a Tax Authority that, under applicable Law, is no t subject to further review or appeal).

ARTICLE 7
TERMINATION

7.1 Termination . At any time before the Closing, this Agreement may be terminated as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by either Seller or Buyer, if the Closing shall not have occurred on or before February 28, 2017 (the " Termination Date "), except that the right to terminate this Agreement under this Section 7.1(b) shall not be available to (i) Seller if it is in material breach of this Agreement and such breach of this Agreement has resulted in the failure of the Closing to occur on or before the Termination Date or (ii) Buyer if it is in material breach of this Agreement and such breach of this Agreement has resulted in the failure of the Closing to occur on or before the Termination Date;

(c) by either Seller or Buyer, if (i) there is a final non-appealable Governmental Order in effect preventing consummation of the transactions contemplated hereby or (ii) there is any Law or Governmental Order enacted, promulgated or issued or deemed applicable to the transactions contemplated hereby by any Governmental Authority that would make consummation of such transactions illegal;

(d) by Buyer, if the Seller has breached any representation, warranty or covenant contained herein and (i) such breach has not been cured within fifteen (15) days after Buyer's notice to Seller of such breach (except that no such cure period will be available or applicable to any such breach which by its nature cannot be cured) and (ii) if not cured at or before the Closing, such breach would result in the failure of any of the conditions set forth in Section 2.8 to be satisfied (except that the termination right under this Section 7.1(d) will not be available to Buyer if Buyer is at that time in material breach of this Agreement); or

(e) by Seller, if Buyer has breached any representation, warranty or covenant of Buyer contained herein and (i) such breach has not been cured within fifteen (15) days after Seller's notice to Buyer of such breach (except that no such cure period will be available or applicable to any such breach which by its nature cannot be cured) and (ii) if not cured at or before the Closing, such breach would result in the failure of any of the conditions set forth in Section 2.7 to be satisfied (except that the termination right under this Section 7.1(e) will not be available to Seller if Seller is at that time in material breach of this Agreement).

7.2 Notice of Termination . Any Party desiring to terminate this Agreement pursuant to Section 7.1 will give notice of such termination to the other Party.

7.3 Effect of Termination . If this Agreement is terminated in accordance with Section 7.1 , this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Seller, Buyer or their respective officers, directors, stockholders or Affiliates, except that each Party shall remain liable for any breaches of this Agreement that occurred before its termination and that Section 5.9 (Public Announcements), Section 7.3 (Effect of Termination) and ARTICLE 8 (Miscellaneous) shall remain in full force and effect and survive any termination of this Agreement.

ARTICLE 8
MISCELLANEOUS

8.1 Notices . All notices, deliveries and other communications pursuant to this Agreement will be in writing and will be deemed given if delivered personally, emailed, delivered by a reputable express delivery service to the Parties at the addresses set forth below or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such notice, delivery or communication will be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of email, on the Business Day after the day that the Party giving notice receives electronic confirmation of receipt from the Party to whom notice is given, and (c) in the case of a recognized express delivery service, on the Business Day that receipt by the addressee is confirmed pursuant to the service's systems:

If to Seller:

250 W Nottingham Pl #120, San Antonio, TX 78209
Attention: John Kerr
email: jkerr28359@gmail.com

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

Norton Rose Fulbright US LLP
300 Convent Street, Suite 2100
San Antonio, Texas 78205
Attention: Daryl L. Lansdale, Jr.

If to Buyer:

Cytori Therapeutics, Inc.
3020 Callan Road
San Diego, CA 92121
Attention: General Counsel
email: jhayden@cytori.com

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

Agiletic Law Group, P.C.
15030 Avenue of Science, Suite 201
San Diego, California 92128
Attention: James Cartoni
email: jim@agiletic.com

8.2 Severability . If any term or provision of this Agreement or the application of any such term or provision to any Person or circumstance is held by final judgment of a court of competent jurisdiction or arbiter to be invalid, illegal or unenforceable in any situation in any jurisdiction, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. If the final judgment of such court or arbitrator declares that any term or provision hereof is invalid, void or unenforceable, the Parties agree to, as applicable, (a) reduce the scope, duration, area or applicability of the term or provision, (b) to delete specific words or phrases, or (c) replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the Parties.

8.3 Entire Agreement . This Agreement, the Ancillary Agreements and the documents, instruments and other agreements specifically referred to herein or therein or delivered pursuant hereto or thereto, including all exhi bits and schedules hereto and thereto, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, term sheets, letters of interest, correspondence (including e-mail) and undertakings, both written and oral, between Seller on the one hand, and Buyer on the other hand, with respect to the subject matter hereof.

8.4 Assignment . Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned or delegated by any Party by operation of Law or otherwise without the prior written consent of the other Party to this Agreement and any attempt to do so will be void, except that (a) Buyer may assign and delegate any or all of its rights, interests and obligations under this Agreement to any Person, as long as any such Person agrees in writing to be bound by all of the terms, conditions and provisions contained in this Agreement and (b) Seller may assign all of its rights hereunder to a liquidating trust as long as such trust assumes Seller's obligations under ARTICLE 6 hereunder.

8.5 Amendment; Waiver . This Agreement may be amended, supplemented or otherwise modified by a written instrument duly executed by Buyer and Seller. No waiver by any Party of any of the provisions herein shall be effective unless explicitly set forth in a writing duly executed by the Party so waiving. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

8.6 No Third-Party Beneficiaries . This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.7 Expenses . Except as otherwise expressly provided herein, Buyer, on the one hand, and Seller, on the other hand, each shall pay their respective expenses (including legal, accounting, investment banking, finders and advisory fees and expenses) incurred in connection with the negotiation and execution of this Agreement or the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

8.8 Governing Law . Except for matters which are mandatorily governed by the laws of the State of Delaware, this Agreement will be governed by, and construed in accordance with, the Laws of the State of California, except for any such Laws whose application would result in the application of the Laws of another jurisdiction. The Parties hereby irrevocably submit to the jurisdiction of the courts of the State of California and the federal courts of the United States sitting in the State of California in respect of the interpretation and enforcement of the provisions of this Agreement, the Ancillary Agreements and the documents referred to in this Agreement and the Ancillary Agreements, and in respect of the transactions contemplated hereby and thereby, and hereby waive, and agree not to assert, as a defense in any Action for the interpretation or enforcement of this Agreement, the Ancillary Agreements or of any such other document, that it is not subject thereto or that such Action may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement, any Ancillary Agreements or any such other document may not be enforced in or by such courts. The Parties hereby consent to and grant any such court jurisdiction over the Person of such Parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such Action in the manner provided in Section 8.1 or as permitted by Law will be valid and sufficient service thereof.

8.9 Specific Performance . The Parties agree that irreparable damage would occur to the other Parties in the event that any of the provisions of this Agreement were not performed by in accordance with their specific terms or were otherwise breached or threatened to be breached and that an award of money damages might be inadequate in such event. Accordingly, each Party agrees that the other Parties will be entitled to equitable relief, without proof of actual damages, including an order for specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which it is entitled at law or in equity as a remedy for any such breach or threatened breach. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement will not be required to provide any bond or other security in connection with any such injunction or order.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed will be deemed to b e an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by electronic delivery in Adobe Portable Document Format or other electronic format based on common standards will be effective as delivery of a manually executed counterpart of this Agreement.

8.11 Non-recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto, and their successors (including any Successor Entity) and permitted assigns, and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, stockholder, Affiliate, agent, attorney or other representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim or Action based on, in respect of or by reason of the transactions contemplated hereby.

[Signature page follows]

IN WITNESS WHEREOF, each of the Parties has caused this Asset Purchase Agreement to be executed by a duly authorized officer as of the Effective Date.

Cytori Therapeutics, Inc.

By:	/s/ Marc H. Hedrick
Name:	Marc H. Hedrick
Title:	President & CEO

Azaya Therapeutics, Inc.

By:	/s/ John C. Kerr
Name:	John C. Kerr
Title:	President

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this " Assignment and Assumption Agreement ") is made and entered into as of February 14, 2017 (the " Effective Date "), by and between Cytori Therapeutics, Inc., a Delaware corporation (" Buyer "), and Azaya Therapeutics, Inc., a Delaware corporation (" Seller "), pursuant to that certain Asset Purchase Agreement dated January 16, 2017 (the " Asset Purchase Agreement "), by and between Buyer and Seller. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Asset Purchase Agreement.

Seller hereby sells, conveys, assigns, transfers and delivers to Buyer all Acquired Assets.

Buyer hereby accepts, assumes and agrees to pay, perform or otherwise discharge all Assumed Liabilities. Each of Buyer and Seller further hereby agrees to sign, seal, execute and deliver, or cause to be signed, sealed, executed and delivered, and to make or cause to be done or made, upon the reasonable written request of Seller or Buyer, respectively, any and all instruments, papers, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by Seller or Buyer, respectively, for the purpose of, or in connection with the sale, conveyance, assignment, transfer and delivery to Buyer of the Acquired Assets and the acceptance, assumption, payment, performance, and discharge by Buyer of the Assumed Liabilities.

This Assignment and Assumption Agreement is subject to all of the representations, warranties, covenants, agreements and indemnities set forth in the Asset Purchase Agreement, all of which are incorporated herein by reference. For the avoidance of doubt, the Parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities (including limitations of the same) contained in the Asset Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of this Assignment and Assumption Agreement and the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall prevail and govern.

This Assignment and Assumption Agreement is not intended and shall not be deemed to confer upon or give any Person except the Parties hereto and their respective successors and permitted assigns any right, title, interest, remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Assignment and Assumption Agreement. This Assignment and Assumption Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

Except for matters which are mandatorily governed by the laws of the State of Delaware, this Assignment and Assumption Agreement will be governed by, and construed in accordance with, the Laws of the State of California, except for any such Laws whose appl ication would result in the application of the Laws of another jurisdiction.

This Assignment and Assumption Agreement may be amended, supplemented or otherwise modified by a written instrument duly executed by Buyer and Seller. No waiver by any Party of any of the provisions herein shall be effective unless explicitly set forth in a writing duly executed by the Party so waiving. The waiver by any Party of a breach of any provision of this Assignment and Assumption Agreement shall not operate or be construed as a waiver of any subsequent breach.

All notices, deliveries and other communications pursuant to this Assignment and Assumption Agreement shall be given in accordance with the terms set forth in Section 8.1 of the Asset Purchase Agreement.

This Assignment and Assumption Agreement may be executed in any number of counterparts, and by each Party in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Assignment and Assumption Agreement by facsimile or electronic delivery in PDF format shall be as effective as delivery of a manually executed counterpart of this Assignment and Assumption Agreement and shall be sufficient to bind the Parties to the terms and conditions of this Assignment and Assumption Agreement.

IN WITNESS WHEREOF, Buyer and Seller have executed this Assignment and Assumption Agreement as of the Effective Date by their respective officers thereunto duly authorized .

CYTORI THERAPEUTICS, INC.

By: _____
Name: _____
Title: _____

AZAYA THERAPEUTICS, INC.

By: _____
Name: John Kerr
Title: President

EXHIBIT B

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of February 14, 2017, by and among Cytori Therapeutics, Inc., a Delaware corporation ("Purchaser"), Azaya Therapeutics, Inc., a Delaware corporation ("Seller"), and Texas Capital Bank, a national banking association (the "Escrow Agent").

BACKGROUND INFORMATION

A. Purchaser is purchasing certain assets of Seller pursuant to that certain Asset Purchase Agreement between the parties dated January 16, 2017 (the "APA").

B. Pursuant to the terms of the APA, a portion of the purchase consideration to be paid by Purchaser is to be held in escrow for the satisfaction of claims which could potentially arise under the APA, and the parties wish for Escrow Agent to manage the escrowed property.

PROVISIONS

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

1. **Appointment** . Purchaser and Seller hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. **Escrow Shares/Escrow Fund .** Upon execution of this Escrow Agreement, Purchaser will deliver to the Escrow Agent Two Hundred Ninety-three Thousand Three hundred Ten (293,310) shares of common stock of Purchaser, which shares will be certificated in Seller's name (the "Escrow Shares"). The Escrow Agent shall hold the Escrow Shares and, subject to the terms and conditions hereof, shall release the Escrow Shares to Purchaser or Seller, as appropriate. To the extent the Escrow Shares are converted into cash in accordance with joint written instructions signed by both Seller and Purchaser, the Escrow Agent shall hold such cash (the "Escrow Deposit"), and subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof (collectively, the "Escrow Fund") as directed in Section 3.

3. **Investment of Fund .** The Escrow Agent is authorized to invest any otherwise uninvested cash in either bank deposits with the Escrow Agent or in any publicly registered money market funds it generally makes available to its escrow customers. For the purpose of investing cash funds held in escrow, the Escrow Agent may accept and act upon in the case of the Escrow Fund the joint written instructions of the designated representatives of Purchaser and Seller (the "Authorized Representatives"). The initial Authorized Representatives are set forth on Schedule 1 attached hereto. The parties shall indemnify and hold the Escrow Agent harmless from any and all liability for acting on a written investment instruction purported to be given by the Authorized Representatives, absent gross negligence or willful misconduct by the Escrow Agent. The Escrow Agent shall not be responsible for the authenticity of any signatures or instructions or be in any way liable for any unauthorized instruction or for acting on an instruction, whether or not the persons giving the instructions were in fact the Authorized Representatives. In no event shall the Escrow Agent be liable to the parties for any consequential, special or exemplary damages, including but not limited to lost profits, from any case whatsoever arising out of, or in any way connected with acting upon instructions believed by the Escrow Agent to be genuine. The parties acknowledge that the Escrow Agent shall be entitled to distribution plan payments, shareholder services fees, administrative service fees, "12b-1" fees or similar fees paid by such money market mutual fund companies, distributors or agents. The parties hereby consent to the Escrow Agent's receipt of such fees and that the interest paid on the Escrow Fund shall be net of such fees.

The Escrow Agent will act upon investment instructions the day that such instructions are received, provided the requests are communicated by 10:00 a.m. Dallas, Texas time. Instructions received after an applicable investment cutoff deadline will be treated as being received by the Escrow Agent on the next business day, and the Escrow Agent

shall not be liable for any loss arising, directly or indirectly, in whole or in part, from the inability to invest cash funds on the day the instructions are received. The Escrow Agent shall not be liable for any loss i ncurred by the actions of third parties or for any loss arising from error, failure, or delay in the making of an investment which is caused by circumstances beyond the Escrow Agent's reasonable control.

4. **Disposition and Termination .**

(a) **Disposition.** The Escrow Agent is hereby authorized to make disbursements of the Escrow Shares or Escrow Fund, as applicable, only as follows:

(i) in accordance with joint written instructions signed by both Purchaser and Seller and in the form attached hereto as Schedule 2 (the "Joint Notice");

(ii) as specified in a Final Determination as follows: if there is any question as to any party's entitlement to the Escrow Shares or Escrow Fund, as applicable, the Escrow Agent shall continue to hold the Escrow Shares or Escrow Fund, as applicable, in accordance with the terms of this Escrow Agreement until (A) receipt of a Joint Notice or (B) the question of such party's entitlement to the Escrow Shares or Escrow Fund, as applicable, shall have been determined by a final and non-appealable order or judgment of a court of competent jurisdiction (a "Final Determination"); or

(iii) into the registry of a court of competent jurisdiction in accordance with Section 6 or 13, as applicable.

(b) **Earnings.** All amounts earned with respect to the Escrow Fund (whether interest or otherwise) shall become a part of the Escrow Fund and shall be held under the same terms as the Escrow Deposit initially delivered to the Escrow Agent hereunder. Amounts earned with respect to the Escrow Fund shall be paid at the time of any disbursement hereunder to the party receiving such disbursement in accordance with the applicable provision of Section 4(a).

(c) **Termination.** Upon delivery of the Escrow Shares or Escrow Fund, as applicable, by the Escro w Agent, this Escrow Agreement shall terminate, subject to the provisions of Sections 7 and 8 which shall survive such termination. Upon termination of this Escrow Agreement, Purchaser and Seller shall execute and deliver the receipt in the form of Schedule 3 attached hereto.

(d) **Directions and Instructions.** Where directions or instructions from more than one of the undersigned are required, such directions or instructions may be given by separate instruments of similar tenor. Any of the undersigned may act hereunder through an agent or attorney-in-fact, provided satisfactory written evidence of authority is first furnished to the Escrow Agent.

5. **Escrow Agent** . Purchaser and Seller agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges, and immunities of the Escrow Agent:

(a) The Escrow Agent is not a party to, and is not bound by, or charged with notice of, any agreement out of which this escrow may arise. UNDER NO CIRCUMSTANCES WILL THE ESCROW AGENT'S RIGHTS AND OBLIGATIONS BE ALTERED BY THE TERMS OF ANY AGREEMENT TO WHICH THE ESCROW AGENT IS NOT A PARTY. The Escrow Agent shall not be bound by any modification, amendment or revision of this Agreement unless the same shall be in writing and signed by all of the parties hereto.

(b) The Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow, or any part thereof. Further, the Escrow Agent shall not be responsible for determining or verifying (i) the accuracy of any notices or instructions delivered hereunder, or the form of execution thereof, or (ii) the identity or authority of any person executing or delivering this Agreement, any property delivered hereunder, or any instructions delivered in connection herewith, including instructions from any officer acting on the behalf of a party that is a corporation or other entity.

(c) The Escrow Agent shall be protecte d in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be.

(d) The Escrow Agent shall not be liable for anything, which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(e) The Escrow Agent may, at its sole discretion, consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel. Purchaser and Seller jointly and severally agree to reimburse Escrow Agent for any reasonable and documented legal fees incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder, except to the extent that such fees relate to claims of Escrow Agent's gross negligence or willful misconduct.

(f) In the event of any disagreement between the parties to this Agreement, or between them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the escrow, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been adjudicated by a court of competent jurisdiction and a final and non-appealable order or judgment rendered, or (ii) all differences shall have been settled and all doubt resolved by agreement between the parties, and the Escrow Agent shall have been notified thereof in writing signed by Purchaser and Seller. The rights of the Escrow Agent under this Section 5(f) are cumulative of all other rights which it may have by law or otherwise.

6. **Resignation .** The Escrow Agent may at any time resign hereunder by giving notice of its resignation to the other parties hereto, at their respective addresses set forth in this Escrow Agreement, at least ten (10) days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Escrow Shares or Escrow Fund, as applicable, shall be tendered to a successor escrow agent designated by Purchaser and Seller, whereupon the Escrow Agent's obligations hereunder shall cease and terminate. If no such person shall have been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate. The Escrow Agent's sole responsibility thereafter shall be to keep safely the Escrow Shares or Escrow Fund, as applicable, and to deliver the same to a person designated by Purchaser and Seller or in accordance with a final and non-appealable order or judgment of a court of competent jurisdiction.

7. **Compensation and Reimbursement .** For normal services Escrow Agent will be paid in accordance with the fee schedule attached as Schedule 4. All such fees, expenses, out-of-pocket expenses, disbursements, and advances shall be paid equally by Purchaser and Seller within a reasonable period of time not to exceed thirty (30) days after billing. It is understood that the fees and usual charges set forth in this Section 7 for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the provisions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not contemplated by this Agreement, or if the parties request a substantial modification of its terms, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or its subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all out-of-pocket costs, reasonable attorneys' fees and expenses occasioned in such default, delay, controversy or litigation, and the Escrow Agent shall be entitled to retain all documents and/or things of value at any time held by the Escrow Agent pursuant to this Agreement to the extent necessary to cover the compensation, fees, costs and expenses referenced in this Section 7 until all such amounts are paid. In the event that payment is not received by the Escrow Agent within thirty (30) days after billing, the unpaid Escrow Agent's fees will accrue simple interest at an annual rate of five percent (5%) may be deducted from the Escrow Fund, if any.

8. **Indemnity .** In the event the Escrow Agent becomes involved in any claims, controversies, or legal proceedings in connection with this escrow, Purchaser and Seller jointly and severally agree to indemnify and hold the Escrow Agent harmless from all losses, costs, damages and expenses, including attorneys' fees suffered or incurred by the Escrow Agent as a result thereof, but excluding consequential, special or exemplary damages, including, but not limited to lost profits (collectively, "Losses"), except to the extent such Losses result from the gross negligence or willful misconduct of the Escrow Agent. Payment of such costs, damages, expenses or fees shall b e made by Purchaser and Seller within a reasonable period of time not to exceed thirty (30) days after billing. In the event that payment is not received by the Escrow Agent within thirty (30) days after billing, the Escrow Agent's costs, damages, expense s and fees will accrue simple interest at an annual rate of five percent (5%)may be deducted from the Escrow Fund, if any. The obligations of Purchaser and Seller under this Section 8 shall be performable at the office of the Escrow Agent in Dallas, Texas , and shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement by lapse of time or otherwise. Notwithstanding this Section 8, all fees and costs of the Escrow Agent shall be paid in accordance with the provisions o f this Agreement.

9. **Taxpayer Identification Numbers/Tax Reporting .**

(a) **Taxpayer Identification Numbers ("TINs").** Purchaser and or Seller have provided the Escrow Agent with their respective fully executed Internal Revenue Service ("IRS") Form W-9 and/or other required documentation. Purchaser and Seller each represent that its correct TIN assigned by the IRS, or any other taxing authority, is set forth in the delivered forms, as well as in the Substitute IRS Form W-9 set forth on the signature page of this Escrow Agreement.

(b) **Tax Reporting.** All interest or other income earned under the Escrow Agreement shall be allocated to Seller, and reported, as and to the extent required by law, by the Escrow Agent to Seller and to the IRS, or any other taxing authority, on IRS Form 1099 (or other appropriate form) as income earned from the escrow by Seller. Any other tax returns required to be filed will be prepared and filed by Seller with the IRS and any other taxing authority as required by law. Seller acknowledges and agrees that any taxes payable from the income earned on the investment of any sums held in the Escrow Fund, if any, shall be paid by Seller. On the first business day of January, April, June and September of each year, the Escrow Agent shall deliver to Seller an amount equal to forty percent (40%) of all interest or other income earned under the Escrow Agreement since the last distribution pursuant to this sentence. Seller shall indemnify, defend, and hold harmless the Escrow Agent with respect to the filing of any tax returns and the payment of any taxes attributable to the Escrow Fund, if any . The Escrow Agent shall withhold any taxes it deems appropriate, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

10. **Notices .** All communications hereunder shall be in writing and shall be deemed to be duly given and received:

(a) upon delivery, if delivered personally;

(b) upon confirmed transmittal, if sent by facsimile or electronic mail;

(c) on the next Business Day (as hereinafter defined), if sent by overnight courier; or

(d) two (2) Business Days after mailing, if mailed by prepaid certified or registered mail, return receipt requested,

to the appropriate notice address set forth below or to such other address as any party hereto may have furnished to the other parties in writing pursuant to this Section 10. "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent location set forth in the notice address set forth below is authorized or required by law or executive order to remain closed.

If to Purchaser	Cytori Therapeutics, Inc. 3020 Callan Road San Diego, CA 92121 Attention: General Counsel Tel No.: 858.875.5223 Fax No.: 858.458.0994 email: jhayden@cytori.com
If to Seller	Azaya Therapeutics, Inc. c/o John Kerr 250 W Nottingham Pl #120, San Antonio, TX 78209 Attention: John Kerr Tel No.: 210- 832-8787 Email address: jkerr28359@gmail.com
If to the Escrow Agent	Texas Capital Bank 2000 McKinney Suite 1800 Dallas, TX 75201 Attention: Ryan McGrew Tel No.: 214-932-6898 Fax No.: 214-932-6833 Email address: ryan.mcgrew@texascapitalbank.com

11. **Monthly Statements.** Each undersigned party shall receive a monthly statement of receipts and disbursements, and a list of assets comprising the Escrow Shares or Escrow Fund, as applicable.

12. **Compliance with Court Orders.** In the event that any of the Escrow Shares or Escrow Fund, as applicable, shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the Escrow Shares or Escrow Fund, as applicable, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

13. **Right of Interpleader.** Should any controversy arise involving Purchaser and Seller or any other person, firm or entity with respect to this Escrow Agreement or the Escrow Shares or Escrow Fund, as applicable, or if the Escrow Agent should be in doubt as to what action to take, or if the Escrow Agent resigns and Purchaser and Seller are unable to agree on a successor to the Escrow Agent, then, in each such case, the Escrow Agent shall have the right, but not the obligation, to institute a petition for interpleader in a court of competent jurisdiction to determine the rights of the parties hereto and deliver to such court the Escrow Shares or Escrow Fund, as applicable, for holding and disbursement, at which time the Escrow Agent's obligation hereunder shall cease and terminate, subject to the provisions of Sections 7 and 8.

14. **Termination of the Escrow Agent .** By mutual agreement, Purchaser and Seller shall have the right at any time upon not less than ten (10) days prior written notice to the Escrow Agent to terminate their appointment of the Escrow Agent or any successor escrow agent, as escrow agent hereunder, provided that Escrow Agent shall be entitled to receive all fees for periods prior to termination and to receive the reimbursement of its expenses. The Escrow Agent or successor escrow agent shall continue to act as escrow agent hereunder until a successor is appointed and qualified to act as the escrow agent.

15. **Miscellaneous .**

(a) **Amendment; Waiver.** The provisions of this Escrow Agreement may be waived, altered, modified, amended or supplemented, in whole or in part, only by a writing signed by all parties hereto.

(b) **Assignment.** Neither this Escrow Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Section 6, without the prior consent of the other parties.

(c) **Governing Law; Jurisdiction; Waiver.** This Escrow Agreement shall be governed by and construed under the laws of the State of Texas, excluding conflicts of law principles. Each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law, and consents to the jurisdiction of the federal or state courts located in Dallas County, Texas. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS ESCROW AGREEMENT, THE LEGAL RELATIONS BETWEEN THE PARTIES HEREUNDER OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) **Force Majeure.** No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

(e) **Counterparts.** This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Escrow Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

(f) **Severability.** If any provision of this Escrow Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

(g) **No Third Parties Beneficiaries.** Except as expressly provided in Section 8, nothing in this Escrow Agreement, whether express or implied, shall be construed to give to any person or entity other than the parties any legal or equitable right, remedy, interest or claim under or in respect of this Escrow Agreement or the Escrow Shares or Escrow Fund, as applicable, escrowed hereunder.

(h) **Headings.** The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement.

(i) **Construction.** Unless the context shall otherwise require, the singular shall include the plural and vice-versa, and each pronoun in any gender shall include all other genders.

(j) **Entire Agreement.** The terms and provisions of this Escrow Agreement constitute the entire agreement among the parities with respect of the subject matter hereof, and no party has relied on any rep resentations or agreements of the others, except as specifically set forth in this Escrow Agreement.

(k) **Successors and Assigns.** This Escrow Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

(l) **Additional Information.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a bank account. Purchaser and Seller agree to provide Escrow Agent with the information it requires in order to comply with applicable law, including without limitation, the Bank Secrecy Act and the U.S.A. Patriot Act.

[Signatures appear on the following page]

IN WITNESS WHEREOF , the parties hereto have executed this Escrow Agreement as of the date set forth above.

Tax Certification: Taxpayer Identification Number (TIN): 33-0827593 Date: February __, 2017

Name & Address : Cytori Therapeutics, Inc., a Delaware corporation

3020 Callan Road San Diego, CA 92121

Customer is a (check one):

Corporation __X__ Partnership ____ Individual/sole proprietor ____ Trust _____

Limited liability company ____ Enter the tax classification (D=disregarded entity, C=Corporation, P=Partnership _____

Other _____)

Taxpayer is (check if applicable):

___ Exempt from backup withholding

Under the penalties of perjury, the undersigned certifies that:

(1) the number shown above is its correct Taxpayer Identification Number (or it is waiting for a number to be issued to it);

(2) it is not subject to backup withholding because: (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; and

(3) It is a U.S. citizen or other U.S. person (defined in the Form W-9 instructions).

(If the entity is subject to backup withholding, cross out the words after the (2) above.)

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations.

Note: The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

PURCHASER

CYTORI THERAPEUTICS, INC.

By: _____

Name: _____

Title: _____

Tax Certification: Taxpayer Identification Number (TIN): 81-0584163 Date: February __, 2017

Name & Address : Azaya Therapeutics, Inc., a Delaware corporation

250 W Nottingham Pl #120 San Antonio, Texas 78209

Customer is a (check one):

Corporation __X__ Partnership ____ Individual/sole proprietor ____ Trust _____

Limited liability company ____ Enter the tax classification (D=disregarded entity, C=Corporation, P=Partnership _____

Other _____)

Taxpayer is (check if applicable):

___ Exempt from backup withholding

Under the penalties of perjury, the undersigned certifies that:

(1) the number shown above is its correct Taxpayer Identification Number (or it is waiting for a number to be issued to it);

(2) it is not subject to backup withholding because: (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; and

(3) It is a U.S. citizen or other U.S. person (defined in the Form W-9 instructions).

(If the entity is subject to backup withholding, cross out the words after the (2) above.)

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations.

Note: The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

SELLER

Azaya Therapeutics, Inc.

By: _____

Name: John Kerr

Title: President

ESCROW AGENT:

Texas Capital Bank

By: _____

Name: _____

Title: _____

SCHEDULE 1

Authorized Representatives

Telephone Number(s) and authorized signature(s) for

Person(s) Designated to Give Funds Investment Instructions

Purchaser:

	Name	Telephone Number	Signature
1.	Marc Hedrick	858-458-0900	
2.	Tiago Girão	858-458-0900	
3.	Jeremy Hayden	858-458-0900	

Seller:

	Name	Telephone Number	Signature
1.	John Kerr	210- 832-8787	
2.			
3.			

SCHEDULE 2

Joint Notice

The undersigned hereby give notice (this "Joint Notice") pursuant to Section 4(a) of the Escrow Agreement (the "Agreement"), dated as of February ____, 2017, by and among Texas Capital Bank, a national banking association, as escrow agent (the "Escrow Agent"), _____, a Delaware corporation ("Purchaser"), and Azaya Therapeutics, Inc., a Delaware corporation ("Seller"), and direct the Escrow Agent to disburse the amount(s) set forth below and in the manner set forth below. Capitalized terms used but not defined in this Joint Notice shall have the meaning ascribed thereto in the Agreement.

Disbursement to Seller:

Disbursement Amount: [_____]

Wiring Instructions: [_____]

Disbursement to Purchaser:

Disbursement Amount: [_____]

Wiring Instructions: [_____]

IN WINTESS WHEREOF, the undersigned have caused this Joint Notice to be executed and delivered on this ____ day of _____, 201•.

PURCHASER:

_____

By: _____
Name: _____
Title: _____

SELLER:

Azaya Therapeutics, Inc.

By: _____
Name: _____
Title: _____

SCHEDULE 3

Receipt Upon Termination of Escrow

The undersigned hereby acknowledge receipt from Texas Capital Bank "Escrow Agent" under the Escrow Agreement among the undersigned and the Escrow Agent (the "Agreement"), of the Escrow Shares or Escrow Fund, as applicable , as described in the Agreement. The undersigned acknowledge a faithful and proper performance by the Escrow Agent of its duties under the Agreement, and in consideration of such delivery hereby release and discharge the Escrow Agent from all further responsibility or liability under the Agreement. The Parties agree that the Agreement is hereby terminated.

Executed this ___ day of _____, 201•.

_____

By: _____
Name: _____
Title: _____

_____

By: _____
Name: _____
Title: _____

So acknowledged this _____ day of _____, 201•.

Texas Capital Bank

By: _____

Name: _____

Title: _____

SCHEDULE 4

Escrow Services Fee Schedule

The aggregate escrow fee is $7,500, payable at the time the parties execute this Escrow Agreement. In the event the Escrow Funds are held by the Escrow Agent past May __, 2018, the Seller and Purchaser hereby agree to pay the Escrow Agent additional consideration in an amount that the parties mutually agree upon at that time.

Reasonable additional compensation may be charged for time and expenses where services provided are not covered under this fee schedule or where standard fees do not adequately compensate for services provided or costs incurred.

Services include deposit of the Escrow Fund into a publicly registered, "AAA" rated money market fund, safekeeping of securities, monthly statements of all transactions, buy, sell or exchange of securities per written instructions, record keeping of executed trades, income received, disbursements made and monitoring of maturity dates.

Additional Information

Certain mutual funds including money market funds may entitle the bank to distribution plan payments, shareholder service fees, 12 (b)(1) fees, administrative service fees or similar fees paid by such mutual fund companies, distributors or agents. The fee is deducted monthly from the Escrow Fund at an annual rate of .4 of 1% or 40 basis points. Additional information and prospectus are available upon request.

Whenever Texas Capital Bank receives less than 48 hours notice (as defined by receipt of proposed documents) that it is being considered as Escrow agent, an additional set up fee will be charged.

To comply with the government regulations to fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

EXHIBIT C

NONCOMPETITION AGREEMENT

This **NONCOMPETITION AGREEMENT** (" Agreement "), dated as of February 14 , 2017 (the " Effective Date "), is executed and delivered by John Kerr (" Individual ") to Cytori Therapeutics, Inc., a Delaware corporation (" Buyer ").

WHEREAS , Azaya Therapeutics, Inc. (" Seller ") is engaged in the creation, development, commercialization, and exploitation of, and related activities associated with, Seller's Protein Stabilized Liposomes nanotechnology platform and related assets, including, without limitation, the development and manufacturing of ATI-0918 , a generic formulation of DOXIL/CAELYX® (Johnson & Johnson), a chemotherapy drug that is a liposomal encapsulation of doxorubicin, and ATI-1123, a liposomal formulation of Docetaxel (collectively, the " Business ").

WHEREAS , Buyer and Seller are parties to that certain Asset Purchase Agreement dated as of January 16, 2017 (the " Purchase Agreement "), pursuant to which Buyer will acquire the Acquired Assets.

WHEREAS , Individual is a director of Seller and a holder of capital stock and other securities of Seller and has been closely involved in the Business since its inception and, as such, acknowledges and agrees that Individual has obtained, had access to and developed extensive and valuable expertise and proprietary information associated with the Business. In addition, the reputation and goodwill of Seller associated with the Business and the Acquired Assets are an integral part of Seller's business success throughout the areas where they conduct the Business. If Individual deprives Buyer or its Affiliates of any of the goodwill associated with the Business or in any manner uses the proprietary information or reputation and goodwill associated with the Business in competition with Buyer, its Affiliates or the Business, Buyer and its Affiliates will be deprived of the benefits Buyer has bargained for pursuant to this Agreement and the Purchase Agreement. Since Individual has the ability to compete with Buyer and its Affiliates in the operation of the Business, Buyer therefore desires that Individual enter into this Agreement.

WHEREAS , but for Individual's entry into this Agreement, Buyer will not effect the transactions contemplated by the Purchase Agreement or pay the purchase price contemplated thereby for the Acquired Assets.

AGREEMENT

NOW THEREFORE , as a material inducement to Buyer to execute the Purchase Agreement and to agree to consummate the transactions contemplated thereby, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms . Capitalized terms used herein without definition shall have the meanings ascribed to them in the Purchase Agreement.

2. Term; Effectiveness . The term of this Agreement shall commence on the Effective Date and shall expire on the fifth anniversary of the Effective Date (the " Term "). The effectiveness of this Agreement shall be conditioned upon the Closing of the transactions contemplated by the Purchase Agreement, and Individual's execution of this Agreement is a condition to the Closing.

3. Covenant Not To Compete . Individual shall not, at any time during the Term, directly or indirectly, knowingly or intentionally engage in a Competitive Business Activity (as defined below) anywhere in the world (the " Restricted Territory "). " Competitive Business Activity " shall mean directly or indirectly: (i) engaging in, or managing, advising, instructing or directing persons engaged in, any business that creates, designs, develops, manufactures, markets, licenses, distributes, sells, implements, supports or otherwise exploits any liposomal encapsulation of doxorubicin or Docetaxel; (ii) acquiring or having an ownership interest in any entity that creates, designs, develops, manufactures, markets, licenses, distributes, sells, implements or supports any liposomal encapsulation of doxorubicin or Docetaxel (except for passive ownership of (A) Buyer or its successors or (B) five percent (5%) or less of any other entity); (iii) participating in any capacity (whether as an employee, agent, consultant,

advisor, independent contractor, proprietor, partner, officer, director, joint venturer or otherwise) in the financing, operation, management or control of any firm, partnership, corporation, entity or business that creates, designs, develops, manufactures, licenses, markets, distributes, sells, implements or supports any liposomal encapsulation of doxorubicin or Docetaxel; or (iv) utilizing his kn owledge of the Business or his relationships with customers, suppliers or othersto (A) engage or cause others to engage in any facet of the Business in the Restricted Territory; or (B) induce such customers, suppliers or others to cease buying from, supply ing to or otherwise working with, the Buyer. Individual expressly acknowledges that the limitation with respect to the Restricted Territory is reasonable and necessary to protect the legitimate business interests of Buyer, especially given the special inf ormation and knowledge held by Individual. Further, Individual acknowledges that Buyer would not proceed with the transactions contemplated by the Purchase Agreement without receiving the full scope of the protections provided for hereunder; and that any lesser geographic restriction would not adequately protect Buyer, its Affiliates and the Business.

4. Nonsolicitation . Individual shall not, at any time during the Term, directly or indirectly, either for Individual or for any other person or entity, recruit or otherwise solicit or induce any customer, subscriber, service provider, supplier or other business partner of Buyer or its Affiliates relating to the Business or the Acquired Assets to (a) terminate its arrangement or cease to do business with Buyer as it relates to the Business or the Acquired Assets, or (b) to otherwise materially and adversely change its relationship with Buyer or its Affiliates as it relates to the Business or the Acquired Assets. Individual shall not, at any time during the Term, directly or indirectly, either for Individual or for any other person or entity, solicit any employee, consultant or independent contractor of Buyer or its Affiliates engaged in the Business to terminate his or her employment or service with Buyer or its Affiliates.

5. Confidentiality .

(a) Individual recognizes that he has had access to and knowledge of certain information concerning the Business and the Acquired Assets (collectively, the " Confidential Information "), including (i) confidential or proprietary matters including, but not limited to, financial, business, marketing, operations, scientific, technical, economic and engineering information, whether tangible or intangible, including without limitation, patterns, plans, compilations, devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, codes, know-how, computer software, databases, product names or marks, marketing materials or programs, plans, specifications, shop-practices, customer lists, supplier lists, engineering and manufacturing information, price lists, costing information, employee and consulting relationship information, accounting and financial data, profit margin, marketing and sales data, strategic plans, trade secrets and all other proprietary information, irrespective of the medium in which such Confidential Information is memorialized or communicated, (ii) confidential or proprietary information concerning other parties to this Agreement or their respective Affiliates furnished or made available in connection with this Agreement or any of the documents and agreements contemplated by the Purchase Agreement (collectively, the " Transaction Documents ") , or the transactions contemplated hereby or thereby and (iii) the terms of this Agreement or any of the Transaction Documents, or any of the transactions contemplated hereby and thereby. Individual acknowledges that the Confidential Information is valuable, proprietary and confidential and that such parties have paid substantial consideration and incurred substantial costs to acquire or develop such Confidential Information. Individual agrees that he will treat the Confidential Information as valuable, proprietary and confidential and will not knowingly or intentionally disclose, and will take reasonable measures to prevent the inadvertent or accidental disclosure of, the Confidential Information. Individual agrees that he will not, at any time, directly or indirectly, knowingly or intentionally disclose, divulge, or make known to any person, use, or otherwise appropriate for his own benefit or the benefit of others any of the Confidential Information, or knowingly or intentionally permit any person to examine or make copies of any documents that contain or are derived from the Confidential Information, without the prior written consent of Buyer. Notwithstanding the foregoing, nothing herein shall restrict Individual from disclosing any Confidential Information to the extent that (i) such Confidential Information is or becomes (through no improper action or inaction by Individual) generally available to the public after the Closing, (ii) such disclosure is required by Law, by any Governmental Authority, or by litigation discovery requests, subpoena, civil investigative demand, or similar processes, or (iii) as necessary to defend or exercise any rights or remedies under this Agreement, the Purchase Agreement and the Ancillary Agreements.

(b) In the event Individual is requested or required by Law, by any Governmental Authority, or by litigation discovery requests, subpoena, civil investigative demand, or similar processes, to disclose any of the Confidential Information, Individual agrees to provide Buyer with prompt written notice of such request or requirements so that Buyer, at its sole cost and expense, may seek an appropriate protective order or waive compliance

with the provisions of this Section 5. If, in the absence of a protective order or a receipt of a waiver by Buyer under this Agreement, Individual is nonetheless legally compelled to disclose the Confidential Information, Individual may disclose only that portion of the Confidential Information that is legally required, without liability to Buyer under this Agreement.

(c) Individual hereby acknowledges and agrees that the prohibitions against disclosure of Confidential Information recited herein are in addition to, and not in lieu of, any rights or remedies that Buyer may have available pursuant to the Laws of any jurisdiction or at common law to prevent the disclosure of Confidential Information, and the enforcement by Buyer of its rights and remedies pursuant to this Agreement shall not be construed as a waiver of any other rights or available remedies that Buyer may possess at law or equity .

6. Severability of Provisions . If any covenant set forth in this Agreement is determined by any court to be unenforceable by reason of its extending for too great a period of time or over too great a geographic area, or by reason of its being too extensive in any other respect, such covenant shall be interpreted to extend only for the longest period of time and over the greatest geographic area, and to otherwise have the broadest application as shall be enforceable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which shall continue in full force and effect. Without limiting the foregoing, the covenants contained herein shall be construed as separate covenants, covering their respective subject matters, with respect to each of the separate cities, counties and states of the United States, and each other country, and political subdivision thereof, in which any of the Seller, Buyer or their respective successors now transacts any business.

7. Injunctive Relief . Individual acknowledges that (a) the provisions of Section 3, Section 4 and Section 5 are reasonable and necessary to protect the legitimate interests of Buyer and its Affiliates and the Business, and (b) any violation of Section 3, Section 4 or Section 5 may result in irreparable injury to Buyer, its Affiliates and the Business, the exact amount of which may be difficult to ascertain, and that the remedies at law for any such violation may not be reasonable or adequate compensation to Buyer for such a violation. Accordingly, Individual agrees that if Individual violates the provisions of Section 3, Section 4 or Section 5, in addition to any other remedy which may be available at law or in equity, Buyer and its Affiliates shall be entitled to specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages.

8. Notices . All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if given when delivered in person or upon confirmation of receipt when transmitted by facsimile transmission (but only if followed by transmittal by national overnight courier or hand for delivery on the next business day) or on receipt after dispatch by registered or certified mail, postage prepaid, addressed, or on the next business day if transmitted by national overnight courier, in each case as follows:

If to Buyer, addressed to it at:

Cytori Therapeutics, Inc.

3020 Callan Road

San Diego, CA 92121

Attention: General Counsel

Facsimile: 858-450-4355

With a copy to:

Latham & Watkins LLP

12670 High Bluff Drive

San Diego, CA 92130

Attention: Cheston J. Larson, Esq.

Facsimile: 858-523-5450

If to Individual, addressed to Individual at:

250 W Nottingham Pl #120, San Antonio, TX 78209

email: jkerr28359@gmail.com

9. Entire Agreement; Amendments and Waivers. This Agreement and the Purchase Agreement constitute the complete, final and exclusive statement of the agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No amendment, supplement, modification, rescission or waiver of this Agreement shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a continuing waiver unless otherwise expressly provided. The parties expressly acknowledge that they have not relied upon any prior agreements, understandings, negotiations and discussions, whether oral or written, in deciding to enter into this Agreement.

10. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party without the prior written consent of the other parties, except that Buyer may, without such consent, assign all such rights and obligations to an Affiliate of Buyer or to a successor in interest to Buyer, which shall assume all obligations and liabilities hereunder.

11. Attorneys' Fees. In the event Individual shall fail to perform any of his obligations under this Agreement, Individual and Buyer hereby agree that all reasonable expenses, including reasonable attorneys' fees, which may be incurred by the prevailing party in any action at law or suit in equity to enforce this Agreement shall be paid by the non-prevailing party in such action or suit to the extent allowed by applicable law.

12. Choice of Law; Consent to Personal Jurisdiction. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Texas (without reference to any choice of law rules that would require the application of the laws of any other jurisdiction). Buyer and Individual intend to and do hereby confer jurisdiction to enforce this Agreement upon the courts of any jurisdiction within the geographical scope of the covenants contained herein. If the courts of any one or more of such jurisdictions hold the provisions of this Agreement wholly unenforceable by reason of the breadth of such scope or otherwise, it is the intention of Buyer and Individual that such determination not bar or in any way affect the right of Buyer and its Affiliates to the relief provided above in the courts of any other jurisdiction within the geographical scope of such covenants, as to breaches of such covenants in such other respective jurisdictions, such covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

13. Waiver of Jury Trial. Each party hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each party certifies and acknowledges that (a) such party understands and has considered the implications of this waiver, and (b) such party makes this waiver voluntarily.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto hav e caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

CYTORI THERAPEUTICS, INC.

By: _____

Name: _____

Title: _____

INDIVIDUAL

_____

Name: John Kerr

Exhibit 10.41

LEASE AGREEMENT

BETWEEN

6262 LUSK INVESTORS LLC,
a California limited liability company

(LANDLORD)

AND

CYTORI THERAPEUTICS, INC.,
a Delaware corporation

(TENANT)

February 27, 2017

6262 LUSK BOULEVARD
SAN DIEGO, CALIFORNIA

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LIST OF EXHIBITS

LEASE AGREEMENT

THIS LEASE AGREEMENT (this " Lease ") is made as of February 27, 2017 (" Effective Date "), by and between 6262 LUSK INVESTORS LLC, a California limited liability company (" Landlord "), and CYTORI THERAPEUTICS, INC., a Delaware corporation (" Tenant ").

ARTICLE 1

TERMS AND DEFINITIONS

For the purposes of this Lease, the following terms shall have the following definitions and meanings:

1.1 Landlord : 6262 Lusk Investors LLC, a California limited liability company

1.2 Landlord's Address :

6262 Lusk Investors LLC
c/o Bollert/LeBeau Inc.
4180 La Jolla Village Drive, Suite 210
San Diego, CA 92037
Attention: Greg Bowman

1.3 Tenant : Cytori Therapeutics, Inc., a Delaware corporation

1.4 Tenant's Address :

Prior to the Commencement Date :

Cytori Therapeutics, Inc.
3020 Callan Road
San Diego, CA 92121
Attn: Jeremy Hayden
Email: jhayden@cytori.com

As of the Commencement Date :

Cytori Therapeutics, Inc.
6262 Lusk Boulevard, Suite 200
San Diego, CA 92121
Attn: Jeremy Hayden
Email: jhayden@cytori.com

1.5 Building : That certain one (1)-story (plus mezzanine) building located at 6262 Lusk Boulevard, San Diego, California 92121.

1.6 Premises : Approximately 29,499 rentable square feet of area (" Rentable Square Feet "), subject to final determination in accordance with Section 2.2 below, in Suite number 200 in the Building.

1.7 Initial Term : Sixty-three (63) months.

1.8 Tenant's Vehicle Parking Spaces : Fifty-nine (59) unreserved parking spaces and thirty (30) reserved parking spaces within the Parking Area (defined in Article 33 below) at no additional charge during the Term, subject to the terms and conditions of Article 33 below.

1.9 Tenant Improvement Allowance : (i) Up to Sixty- Eight and 21 /100 Dollars ($ 68 . 21) per Rentable Square Foot of the Premises (i.e., up to $ 2,012,126.79) (" Initial Allowance "), plus (ii) at Tenant's election and subject to repayment as provided herein, an additional amount of up to Ten Dollars ($10.00) per Rentable Square Foot of the Premises (i.e., up to $294,990.00) (" Additional Allowance "), to be contributed by Landlord toward the cost of constructing the Tenant Improvements pursuant to the Work Letter Agreement described in Section 2.1 below. The Initial Allowance and the Additional Allowance shall be collectively referred to herein as the " Tenant Improvement Allowance ." If Tenant elects to use the Additional Allowance or a portion thereof, such amount shall be amortized over the Initial Term at an annual percentage rate of nine percent (9%) and payable by Tenant as a component of Basic Rent. Tenant shall notify Landlord of its election to use the Additional Allowance prior to commencement of construction of the Tenant Improvements. Notwithstanding the foregoing, as of the Effective Date, a portion of the Initial Allowance equal to Five and 67/100 Dollars ($5.67) per Rentable Square Foot of the Premises (i.e., $ 167,259.33) has been already been applied toward the cost of the Tenant Improvements; accordingly, the remaining Initial Allowance is Sixty - Two and 54 /100 Dollars ($ 62.54) per Rentable Square Foot of the Premises (i.e., $ 1,844,867.46).

1.10 Scheduled Commencement Date : November 1, 2017.

1.11 Commencement Date : The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) the later to occur of (*x*) the Scheduled Commencement Date, and (*y*) the date on which the Tenant Improvements are Substantially Complete pursuant to the terms and conditions of, and as that term is defined in, the Work Letter Agreement.

1.12 Basic Rent :

Months of Initial Term	Basic Rent per Rentable Square Foot ($/mo)	Monthly Installments of Basic Rent ($/mo)	Annual Basic Rent ($/yr)
1-12*	$2.15	$63,422.85	$761,074.20
13-24	$2.21	$65,325.54	$783,906.48
25-36	$2.28	$67,285.31	$807,423.72
37-48	$2.35	$69,303.87	$831,646.44
49-60	$2.42	$71,382.99	$856,595.88
61-63	$2.49	$73,524.48	$882,293.76

*Provided that Tenant is not in default under this Lease, monthly installments of Basic Rent shall be abated by fifty percent (50%) during months two (2) through seven (7) of the Initial Term pursuant to the terms and conditions of Section 5.1 below.

1.13 Tenant's Percentage : 35.99%.

1.14 Letter of Credit Amount :

Period of Time	Letter of Credit Amount
Effective Date – May 31, 2017	$126,845.00
June 1, 2017 – October 31, 2017 (or the date immediately prior to the Commencement Date, if earlier)	$253,690.00
November 1, 2017 (or the Commencement Date, if earlier) – Expiration Date	$500,000.00

1.15 Broker(s): CRESA San Diego (Glenn Friedrich and Rich Porreco), representing Tenant, and JLL (Chad Urie, Tim Olson and Grant Schoneman), representing Landlord.

1.16 Permitted Use : Office, laboratory, research, development and device manufacturing and any other use permitted by the applicable zoning regulations, subject to compliance with all applicable Laws (defined below).

1.17 Building Area : 81,976 Rentable Square Feet.

ARTICLE 2

PREMISES AND COMMON AREAS

2.1 Premises . Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises outlined on Exhibit "A-I" attached hereto and incorporated herein by this reference (" Outline of Premises "). The Premises are located in the Building, which, together with the Parking Area, is located on the parcel or parcels of real property (" Project Site ") outlined on the Project Site Plan attached hereto, marked as Exhibit "A-II" , and incorporated herein by this reference (" Project Site Plan ") and legally described on Exhibit "A-III" attached hereto and incorporated herein by this reference (all of which, together with the Building Common Areas and the Project Common Areas, as hereinafter defined, are collectively referred to as the " Project "). The Premises are leased in their "AS-IS" condition in accordance with Article 14 ; provided however, the Premises will be improved by Landlord with the Tenant Improvements described in the Work Letter Agreement, a copy of which is attached hereto, marked as Exhibit "B" and incorporated herein by this reference (" Work Letter Agreement "). The Premises are agreed, for the purposes of this Lease, to have approximately the number of Rentable Square Feet designated in Section 1.6 , subject to adjustment as described in Section 2.2 below. The parties hereto agree that this Lease is upon and subject to the terms, covenants and conditions herein set forth. Each of Landlord and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed.

2.2 Rentable Area .

2.2.1. Landlord and Tenant stipulate and agree that: (a) subject to Section 2.2.2 below, the Rentable Square Feet contained in the Building is as specified in Section 1.17 , and (b) the Rentable Square Feet of the Building shall include all of, and the Rentable Square Feet of the Premises shall include a portion of (such portion to be equitably determined by Landlord) the total square feet contained in any common areas (e.g., electrical rooms) of the Building. The initial Monthly Basic Rent and Tenant's Percentage specified in Section 1.13 of this Lease are based upon the approximate Rentable Square Feet of the Premises set forth in Section 1.6 and the Rentable Square Feet of the Building set forth in Section 1.17 .

2.2.2. Landlord reserves the right, in its reasonable discretion, (a) to modify the standards utilized hereunder for the measurement of Rentable Square Feet (so long as any such modification is reasonably consistent with then prevailing Institutional Owner Practices (defined below) and consistently applied throughout the Project) and (b) consistent with any such modifications of measurement standards, to adjust the Rentable Square Feet of the Premises and the Building and/or portions thereof and any economic terms set forth herein (such as Tenant's Percentage) calculated on the basis thereof; provided that Landlord shall have no right to adjust the Basic Rent then in effect as a result of any such modification.

2.3 Common Areas . Tenant and its employees, invitees and agents shall have the nonexclusive right to use in common with Landlord and other tenants or occupants of the Project and their respective employees, invitees and agents, subject to the Rules and Regulations referred to in Section 36.1 below and all covenants, conditions and restrictions affecting the Project, any of the following areas which may be appurtenant to the Premises (collectively, " Common Areas "):

2.3.1. any common entrances, lobbies, shared entry lobbies and corridors, shared restrooms, service areas, elevators, stairways, accessways and/or ramps which may be located in the Building, and any common pipes, wires and appurtenant equipment which may be serving the Premises (collectively, " Building Common Areas "); and

2.3.2. the Parking Area (except that Tenant's reserved parking spaces set forth in Section 1.8 above shall be reserved for Tenant's exclusive use, subject to the terms and conditions of Article 33 below) and any loading and unloading areas, trash areas, service areas, parking areas, roadways, sidewalks, walkways, plazas, parkways, driveways, landscaped areas and similar areas and facilities from time to time situated within the Project (collectively, " Project Common Areas ").

2.4 Landlord's Reservation of Rights . Landlord reserves for itself, and for the owner(s) and operator(s) of the Project or any portion thereof, the right from time to time without material interference with Tenant's Permitted Use or access to the Premises and without reduction in the number of Tenant's Vehicle Parking Spaces (other than temporary reductions if and to the extent reasonably necessary for Landlord's maintenance of the Common Areas or in the event of an emergency) , and , except in the event of an emergency, upon reasonable prior Notice (defined below) to Tenant in the event of any material interference with Tenant's Permitted Use or access to the Premises :

2.4.1. to install, use, maintain, repair and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to other parts of the Building above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Premises, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment which are located in the Premises or elsewhere, and to expand the Building and/or the Parking Area (after which expansion there shall be an appropriate adjustment made to Tenant's Percentage);

2.4.2. to make changes in its sole and absolute discretion to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways;

2.4.3. to close temporarily any of the Common Areas for maintenance purposes and to avoid claims of prescriptive rights so long as reasonable access to the Premises remains available;

2.4.4. to designate other land outside the boundaries of the Building or the Project to be a part of the Project Common Areas, so long as Operating Expenses (defined below) for such land are equitably allocated by Landlord (as determined by Landlord in its reasonable discretion) among those tenants or occupants having rights to use same;

2.4.5. to add additional buildings and improvements to the Project Common Areas (after which there shall be an appropriate adjustment made to Tenant's Percentage) so long as Operating Expenses for such buildings and improvements are equitably allocated by Landlord (as determined by Landlord in its reasonable discretion) among those tenants or occupants having rights to use same;

2.4.6. to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building, the Parking Area or the Project, or any portion thereof; and

2.4.7. to do and perform such other acts and make such other changes in, to or with respect to the Project or any portion thereof (excluding the Premises) as Landlord and/or the owner(s) and/or operator(s) thereof may deem to be appropriate.

ARTICLE 3

TERM

3.1 Initial Term . The " Initial Term " of this Lease shall be for the period designated in Section 1.7 , commencing on the Commencement Date and ending on the last day of the month in which the expiration of such period occurs, unless sooner terminated as hereinafter provided; provided that if the Commencement Date occurs on a day other than the first day of any calendar month, for purposes of calculating the date (" Expiration Date ") on which the Term is scheduled to expire and the timing of all scheduled increases in Basic Rent during the Term, the Commencement Date shall be deemed to be the first day of the calendar month following the Commencement Date. The Commencement Date, the date upon which the Initial Term of this Lease shall end unless sooner terminated pursuant to the provisions hereof, the Rentable Square Feet in the Premises and Tenant's Percentage as determined pursuant to Section 2.2 above shall be specified in a Memorandum of Lease Terms, which shall be in the form of Exhibit "C" , attached hereto and incorporated herein by this reference (" Memorandum of Lease Terms "), and shall be executed by Landlord and Tenant as soon as practicable after the Commencement Date. As used herein, " Term " shall refer to the Initial Term as it may be extended by written agreement of Landlord and Tenant.

3.2 Reserved .

ARTICLE 4

DELIVERY

Landlord will endeavor to tender possession of the Premises to Tenant with the Tenant Improvements Substantially Complete on or before the Scheduled Commencement Date; provided, that if the date on which Landlord actually tenders possession of the Premises to Tenant in such condition does not occur on or before the Scheduled Commencement Date, this Lease shall not be void or voidable, the Term of this Lease shall not be extended, and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom; provided further that Landlord shall use commercially reasonable efforts to tender to Tenant delivery of possession of the Premises in such condition as soon as reasonably possibly after the Scheduled Commencement Date. Notwithstanding the foregoing, if Landlord is unable to deliver possession of the Premises to Tenant with the Tenant Improvements Substantially Complete on or before the date which is sixty (60) days after the Scheduled Commencement Date (" First Outside Delivery Date "), which First Outside Delivery Date shall be extended on a day-for-day basis for any delay caused by an event of Force Majeure (as defined in Section 36.8 below), a Tenant Delay (as that term is defined in the Work Letter Agreement) or similar matters beyond the reasonable control of Landlord, Tenant shall be entitled to receive an abatement of Basic Rent on a day-for-day basis for each day between the First Outside Delivery Date and the actual date on which possession of the Premises is delivered to Tenant with the Tenant Improvements Substantially Complete (" Actual Delivery Date "), which abatement shall begin to apply as of the Actual Delivery Date (for example, if the First Outside Delivery Date is January 1, 2018, and the Actual Delivery Date is January 5, 2018, then Basic Rent will be abated for four (4) days, from January 5, 2018, through and including January 8, 2018). Notwithstanding the foregoing, if Landlord is unable to deliver possession of the Premises to Tenant with the Tenant Improvements Substantially Complete on or before the date which is one hundred eighty (180) days after the Scheduled Commencement Date (" Second Outside Delivery Date "), which Second Outside Delivery Date shall be extended on a day-for-day basis for any delay caused by an event of Force Majeure, a Tenant Delay or similar matters beyond the reasonable control of Landlord, then Tenant shall have the right to terminate this Lease by delivering Notice thereof to Landlord no later than five (5) business days after the Second Outside Delivery Date, which termination shall be effective as of the date of such Notice; provided, however, that Tenant shall remain responsible for any and all Excess Costs (as defined in the Work Letter Agreement) incurred by Landlord through the date of such termination and arising out of any change requested by Tenant pursuant to Paragraph 7 of the Work Letter Agreement or any Tenant Delay (as defined in the Work Letter Agreement). Tenant's failure to deliver a Notice of termination within five (5) business days after the Second Outside Delivery Date shall be deemed Tenant's waiver of its right to terminate this Lease due to a delay in delivery of the Premises. The remedies set forth in this Article 4 shall be Tenant's sole and exclusive remedies at law or equity for the matters described herein.

ARTICLE 5

RENT

5.1 Basic Rent . Tenant shall pay Landlord as consideration for the use and enjoyment of the Premises the Basic Rent designated in Section 1.11 (subject to proration as hereinafter provided) in equal monthly installments, each in advance on the first day of each calendar month during the Term commencing on the Commencement Date, except that the first month's Rent shall be paid to Landlord upon delivery to Landlord of a copy of this Lease, executed by Tenant. If the Term of this Lease commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then the Rent for such period shall be prorated on the basis of a thirty (30) day month. Notwithstanding the foregoing, and provided that Tenant is not in default under this Lease beyond any applicable notice and cure period, the monthly installment of Basic Rent for the Premises shall be abated by fifty percent (50%) during months two (2) through seven (7) of the Initial Term (" Abatement Period "). All other terms and provisions of this Lease shall apply to the Premises both during the Abatement Period and thereafter.

5.2 Additional Rent . In addition to the Basic Rent, Tenant agrees to pay as Additional Rent (defined below) the amount of Rent adjustments and other charges required by this Lease. Other charges to be paid by

Tenant hereunder, including, without limitation, payments for Operating Expenses, Real Property Taxes, insurance, insurance deductibles and repairs shall be considered " Additional Rent " for purposes of this Lease. The term " Rent " as used in this Lease shall mean Basic Rent and Additional Rent and all other amounts payable by Tenant pursuant to this Lease. When no other time is stated herein for payment, payment of any amount due from Tenant to Landlord hereunder shall be made within ten (10) business days after Tenant's receipt of Landlord's invoice or statement therefor. All Rent shall be paid to Landlord, without prior demand and without any deduction or offset except as specified herein, in lawful money of the United States of America, at the address designated in Section 1.2 hereof or to such other person or at such other place as Landlord may from time to time designate in writing.

5.3 Late Payment . If Tenant fails to pay any installment of Rent when due or in the event Tenant fails to make any other payment for which Tenant is obligated under this Lease when due, such late amount shall accrue interest and Tenant shall pay Landlord as Additional Rent interest on such amount at an annual rate (" Default Rate ") equal to the lesser of: (a) the then prevailing prime rate of Bank of America NT & SA (" Prime Rate ") plus six (6) percentage points or (b) the maximum rate permitted by law from the date such amount became due until such amount is paid. If the format or components of the Prime Rate are materially changed, or if the Prime Rate ceases to exist, Landlord shall substitute a prime rate or alternative base rate of interest that is maintained by the Bank of America NT & SA or similar financial institution which Landlord determines in its reasonable business judgment. In addition to said interest, Tenant shall pay to Landlord concurrently with any installment of Rent, or other payment, not paid within five (5) days of the date upon which it is due, and Landlord may demand same from Tenant, as Additional Rent, a late charge equal to eight percent (8%) of the late amount to compensate Landlord for the extra costs incurred as a result of such late payment. THE PARTIES AGREE THAT ANY SUCH LATE PAYMENT MAY CAUSE LANDLORD TO INCUR ADMINISTRATIVE COSTS AND OTHER DAMAGE, THE EXACT AMOUNT OF WHICH WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH INTEREST AND LATE CHARGE REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DETRIMENT THAT LANDLORD WILL SUFFER BY REASON OF LATE PAYMENT BY TENANT. Acceptance of any such interest and late charge shall not constitute a waiver of any Tenant Default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord hereunder or at law.

5.4 Additional Late Payment Remedies . If any payment of Rent made by check, draft or money order is returned to Landlord due to insufficient funds, or otherwise, Landlord shall have the right, at any time thereafter and upon Notice to Tenant, to require Tenant to make all subsequent payments of Rent by cashier's or certified check. Any payment returned to Landlord shall be subject to a handling charge of $50.00. If Tenant fails to pay an installment of Basic Rent within ten (10) days following the date the same is due on any three (3) or more occasions during any twelve (12) month period, Landlord shall have the right, in addition to any other rights or remedies it may have hereunder or at law, to require Tenant thereafter to pay installments of Basic Rent quarterly in advance.

ARTICLE 6

RENT ADJUSTMENT

6.1 Definitions . For the purposes of this Lease, the following terms shall be defined as follows:

6.1.1. **Operating Expenses** : " Operating Expenses " shall consist of all costs actually incurred by Landlord in connection with the operation, management, ownership, insurance, maintenance and repair of the Project, including without limitation the Building, the Common Areas and all other portions of the Project, including any expansions thereof by Landlord or by the owner(s) and/or the operator(s) thereof. Operating Expenses shall include, without limitation, the following: (a) any and all non-tax assessments payable by Landlord for, or costs or expenses incurred by Landlord in connection with, the Building or the Project pursuant to any covenants, conditions or restrictions, reciprocal easement agreements, tenancy-in-common agreements or similar restrictions and agreements affecting the Building or the Project; (b) assessments and any taxes or assessments hereafter imposed in lieu thereof; (c) Rent taxes and gross receipts taxes (whether assessed against Landlord or assessed against Tenant and paid by Landlord, or both); (d) water and sewer charges; (e) accounting, legal and other consulting fees incurred by Landlord in connection with the Project or any portion thereof; (f) the net cost and expense of insurance, and any associated insurance deductibles, for which Landlord and/or the owner(s) and/or the operator(s) of the Project is (are) responsible or any first mortgagee with a lien affecting the Premises reasonably deems necessary in connection

with the operation of the Building or the Project; (g) utilities, including, but not limited to, any and all costs and fees associated with the installation, maintenance, repair, or replacement of intrabuilding network telephone and data cable; (h) janitorial services, security, labor, utilities surcharges or any other costs levied, assessed or imposed by, or at the direction of, or resulting from , statutes, including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations or interpretations thereof promulgated by, any federal, state, regional, local or municipal governmental authority, agency or subdivision (each, a " Governmental Authority ") in connection with the use or occupancy of the Project or any portion thereof; (i) costs and expenses incurred or suffered by Landlord in connection with transportation or energy management programs required by any Governmental Authority or voluntarily and reasonably implemented by Landlord for the Project or the Building ; (j) the cost (amortized over such period as is customary under sound institutional real estate property management procedures (" Institutional Owner Practices "), together with interest at a rate (" Interest Rate ") equal to the Prime Rate plus two (2) percentage points on the enumerated balance): (i) of any capital improvements or replacements intended as labor ‑saving devices or to effect other economies in the maintenance or operation of, or stability of services to, the Building (including Building Common Areas) or the Project Common Areas by Landlord or by the owner(s) and/or the operator(s) thereof, or (ii) of replacing any equipment, systems or materials needed to operate the Project or any portion thereof at the same quality levels as prior to the improvement or replacement or as mandated by revisions or governmental interpretations of any applicable Laws (defined below) or (iii) which are designed to reduce Operating Expenses or to comply with Laws; (k) costs incurred in the management of the Project, including supplies, materials, equipment, on-site management office rent, wages and salaries of employees used in the management, operation and maintenance thereof, payroll taxes and similar governmental charges with respect thereto, and a Project management fee (not to exceed t wo percent (2 %) of gross rents received by Landlord for the Project , grossed up to reflect ninety-five percent (95%) occupancy); (l) all costs and expenses for air-conditioning, waste disposal, heating, ventilating, elevator repair and maintenance, supplies, materials, equipment, and tools incurred in connection with the Project or any portion thereof (except as the same is payable to Landlord by tenants of the Project under their leases for space in the Project); (m) repair and maintenance of the roof and stru ctural portions of the Building and the Common Areas , including the plumbing, heating, ventilating, air conditioning and electrical systems installed or furnished by Landlord; (n) maintenance costs of the Building, the Common Areas and the Project or any portion thereof, including utilities and payroll expenses, rent of personal property used in maintenance and all other upkeep; (o) costs and expenses of gardening and landscaping the Project or any portion thereof; (p) maintenance of signs located in or about the Project (other than Tenant's signs or the signs of other tenants or occupants of the Building who are responsible to maintain their own signs); (q) personal property taxes levied on or attributable to personal property of Landlord or the owner(s) and/or operator(s) of the Project used in connection with the Project; (r) reasonable audit or verification fees incurred in con nection with the Project; and (s) the costs and e xpenses of repairs (including latent defects), resurfacing, maintenance, painting, lighting, cleaning, refuse removal, security and similar items incurred with respect to the Project, including appropriate reserves.

Operating Expenses shall not include: (A) depreciation on the Project, the Building or equipment therein; (B) Landlord's executive salaries (above building manager); (C) real estate broker's or other leasing commissions, finder's fees, advertising expenses, and other costs incurred exclusively in connection with the leasing of the Project; (D) legal fees and disbursements incurred for collection of tenant accounts or negotiation of leases, or relating to disputes between Landlord and other tenants and occupants of the Building or Project; (E) the cost of any capital improvements unless specifically permitted by this Section 6.1.1 , parts (a) through (s), inclusive; (F) Real Property Taxes or Landlord's federal or state income, franchise, inheritance or estate taxes; (G) amounts received by Landlord on account of proceeds of insurance to the extent the proceeds are reimbursement for expenses which were previously included in Operating Expenses; (H) payments of principal or interest on any mortgages upon the Project or Building; (I) payments of ground rent pursuant to any ground lease covering the Project or Building; (J) the costs of gas, steam or other fuel; operation of elevators and security systems; heating, cooling, air conditioning and ventilating; chilled water, hot and cold domestic water, sewer and other utilities or any other service work or facility, or level or amount thereof, provided to any other tenant or occupant in the Project which either (x) is not required to be supplied or furnished by Landlord to Tenant under the provisions of this Lease or (y) is supplied or furnished to Tenant pursuant to the terms of this Lease with separate or additional charge; (K) any cost that is expressly excluded from Operating Expenses in an express provision contained in this Lease; (L) the cost of providing or performing improvements, work or repairs to or within the premises of another tenant or occupant of the Project where such improvements are of a nature which are not Landlord's responsibility to perform pursuant to this Lease; (M) any interest and penalties incurred as a result of Landlord's late payment of any bill; (N) any bad debt loss, rent loss or reserves for bad debt or rent loss; (O) any items for which Landlord is otherwise compensated, to the extent of the

net receipts from such compensation, including direct reimbursement by any tenant or occupant of the Project (exclusive of reimbursement pursuant to a provision similar to this Article 6); (P) costs of repair or restoration work following a casualty or condemnation, if and to the extent Landlord is reimbursed by insurance or that would have been received by Landlord had it maintained the insurance it was required to maintain pursuant to this Lease, or if and to the extent covered by the net proceeds of any condemnation award; (Q) costs associated exclusively with the operation of the business of the entity which constitutes Landlord which are not directly related to the operation of the Project and which relate to the following: the formation of the entity which constitutes Landlord; the internal accounting and legal matters which relate exclusively to preparation of the tax returns and financial statements of such entity, together with the gathering of data therefor; the cost of defending any lawsuits with any mortgagee; the costs of selling, syndication, financing, mortgaging or hypothecating any of Landlord's interest in the real property and improvements constituting the Project; and the costs of any dispute between Landlord and any employee; (R) costs attributable to enforcing leases against other tenants in the Project, such as audit and verification fees, attorneys' fees, court costs, adverse judgments and similar expenses; (S) the portion of any fee or charge for services paid to a party owned by or under common ownership with Landlord to the extent that the same exceeds the competitive cost for such services were they not so rendered by a party affiliated with Landlord; (T) costs incurred in connection with the original construction of the Project; and (U) costs arising from the presence of Hazardous Materials (as defined below) in, on, under or about the Project, including, without limitation, Hazardous Materials in the groundwater or soil under the Project, to the extent that the presence (or any exacerbation thereof) of such Hazardous Materials is not attributable to the activities or omissions of Tenant in violation of Section 8.3 below .

6.1.2. **Real Property Taxes** : " Real Property Taxes " shall mean and include any form of assessment, re-assessment, license fee, license tax, business license fee, commercial rent tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any Governmental Authority, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, as against any legal or equitable interest of Landlord in the Building, the Premises or the Project, including but not limited to the following:

(A) any tax on Landlord's "right" to other income from the Project or any portion thereof or as against Landlord's business of leasing the Project or any portion thereof;

(B) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real estate tax, including but not limited to, any assessments, taxes, fees, levies and charges that may be imposed by any Governmental Authority for such services as fire protection, street, sidewalk or road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, it being the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Real Property Taxes" for the purposes of this Lease;

(C) any assessment, tax, fee, levy or charge allocable to or measured by the area of any premises in the Project or the Rent payable hereunder and under any other leases for premises in the Building, the Parking Area or the Project, including without limitation any gross income tax or excise tax levied by any Governmental Authority or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by tenants of their premises in the Project, or any portion thereof; and

(D) any assessment, tax, fee, levy or charge upon this transaction or any document creating or transferring an interest or an estate in the Project or any portion thereof, or based upon a reassessment of the Project or any portion thereof by virtue of a "change in ownership", and as a result thereof, and to the extent that in connection therewith, the Building is reassessed for real estate tax purposes by the appropriate Governmental Authority pursuant to the terms of Proposition 13 (as adopted by the voters of the State of California in the June, 1978 election, or any successor statute).

Notwithstanding any provision of this Section 6.1.2 expressed or implied to the contrary, "Real Property Taxes" shall not include (i) federal or state income, franchise, inheritance, gift, transfer, or estate taxes, (ii) any interest and penalties incurred as a result of Landlord's late payment of Real Property Taxes, (iii) amounts

that would otherwise constitute Real Property Taxes but are in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term, or (iv) Operating Expenses .

6.1.3. **Tenant's Percentage** . " Tenant's Percentage " means the percentage set forth in Section 1.13 ; provided, however, that Landlord reserves the right from time to time during the Term of this Lease to recalculate Tenant's Percentage pursuant to Section 2.2 and/or Section 2.4 , in which case Tenant's Percentage shall mean that numeric figure obtained by dividing the Rentable Square Feet of the Premises, as adjusted pursuant to Section 2.2 , by the total Rentable Square Feet of the Building.

6.2 Calculation Methods and Adjustments .

6.2.1. Subject to the provisions of this Section 6.2 , all calculations, determinations, allocations and decisions to be made hereunder with respect to Operating Expenses and Real Property Taxes shall be made on a triple net basis in accordance with the good faith determination of Landlord applying sound accounting and property management principles consistently applied which are consistent with Institutional Owner Practices. Landlord shall have the right to equitably allocate some or all Operating Expenses among particular classes or groups of tenants in the Project or Building (for example, retail tenants) to reflect Landlord's good faith determination that measurably different amounts or types of services, work or benefits associated with Operating Expenses, as applicable, are being provided to or conferred upon such classes or groups. All discounts, reimbursements, rebates, refunds, or credits (collectively, " Reimbursements ") attributable to Operating Expenses or Real Property Taxes received by Landlord in a particular year shall be deducted from Operating Expenses or Real Property Taxes, as applicable, in the year the same are received; provided, however, if such practice is consistent with Institutional Owner Practices, Landlord may treat Reimbursements generally (or under particular circumstances) on a different basis.

6.2.2. As of the date of this Lease, Tenant shall pay Additional Rent under this Article 6 based on the Operating Expenses and Real Property Taxes for the Project. If the Project at any time contains more than one building, Landlord shall have the right, from time to time, to equitably allocate some or all of the Operating Expenses and/or Real Property Taxes for the buildings comprising the Project among the Building and some or all of the other buildings of the Project. In such event, Landlord shall reasonably determine a method of allocating such Operating Expenses and/or Real Property Taxes attributable to the Building and/or such other building(s) of the Project to the Building and/or such other building(s) and Tenant shall be responsible for paying its proportionate share of such expense(s) which are allocated to the Building. Landlord shall also have the right, from time to time, to require Tenant to pay Tenant's Percentage of Operating Expenses and Real Property Taxes based solely on the Operating Expenses and Real Property Taxes for the Building.

6.3 Payment of Tenant's Percentage of Operating Expenses and Real Property Taxes . This shall be a triple net Lease and Basic Rent shall be paid to Landlord absolutely net of all costs and expenses, except as specifically provided to the contrary in this Lease. The provisions for payment of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes are intended to pass on to Tenant, and reimburse Landlord for, all costs and expenses of the nature described in Section 6.1 incurred in connection with the ownership, operation, management, insurance, maintenance and repair of the Project. For each calendar year of the Term, Tenant shall pay Tenant's Percentage of the Operating Expenses and Tenant's Percentage of the Real Property Taxes paid or incurred by Landlord for such year as Additional Rent. Tenant shall pay such amounts as follows:

6.3.1. **Estimate of Annual Operating Expenses and Real Property Taxes** . At the beginning of each calendar year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a reasonable estimate (" Estimated Statement ") of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes for the then current calendar year. Landlord may revise its estimates of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes for any year from time to time in its reasonable discretion, and upon receipt of a revised Estimated Statement, Tenant shall begin making payments under this Section 6.3.1 in accordance with such revised estimates. For each calendar year during the Term of this Lease, or portion thereof, Tenant shall pay to Landlord the estimated Tenant's Percentage of Operating Expenses and the estimated Tenant's Percentage of Real Property Taxes, as specified in the Estimated Statement. These estimated amounts shall be divided into twelve (12) equal monthly installments. Tenant shall pay to Landlord, concurrently with the regular monthly Basic Rent payment next due following the receipt of such an Estimated Statement, an amount equal to one monthly installment multiplied by the number of months from the commencement of the calendar year for which

such estimates were prepared to the month of such payment, both months inclusive, less any amounts paid under this Section 6.3.1 after commencement of such calendar year based on the last Estimated Statement delivered by Landlord. Subsequent payments under this Section 6.3.1 shall be payable concurrently with the regular monthly Rent payments for the balance of that calendar year and shall continue until the next Estimated Statement is delivered by Landlord. Failure of Landlord to deliver an Estimated Statement for any calendar year shall not relieve Tenant of its obligation to make estimated payments of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes under this Section 6.3.1 .

6.3.2. **Annual Reconciliation** . At the end of each calendar year or as soon thereafter as practicable Landlord shall deliver to Tenant a statement (" Annual Reconciliation ") of (a) the actual annual Operating Expenses and Tenant's Percentage of Operating Expenses for the preceding year, and (b) the actual annual Real Property Taxes and Tenant's Percentage of Real Property Taxes for the preceding year. If for any year, the sum of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes (as specified in the Annual Reconciliation) is less than the total amount of the estimated payments made by Tenant under Section 6.3.1 above for such year, then any such overpayment, or overpayments, shall be credited toward the monthly Rent next falling due after determination by Landlord of such overpayment or overpayments and shall be paid to Tenant in a lump sum within thirty (30) days after expiration of the Term if such credit is payable after the expiration of the Term or if Tenant has not been fully reimbursed for any such overpayment following expiration of the Term. Similarly, if for any year, the sum of Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes (as specified in the Annual Reconciliation) is more than the total amount of the estimated payments made by Tenant under Section 6.3.1 above for such year, then any such underpayment, or underpayments, shall be paid by Tenant to Landlord concurrently with the next regular monthly Basic Rent payment coming due after Tenant's receipt of the Annual Reconciliation (or if the Term shall have expired or terminated, within thirty (30) days following Tenant's receipt of such Annual Reconciliation).

6.3.3. **Survival of Reconciliation** . Even though the Term shall have expired and Tenant shall have vacated the Premises, when the final determination of Tenant's Percentage of actual annual Operating Expenses, and/or of Tenant's Percentage of actual annual Real Property Taxes, for the year in which this Lease terminates is delivered to Tenant, (a) Tenant shall timely pay any amounts payable to Landlord pursuant to Section 6.3.2 above (as a result of any underpayments by Tenant under Section 6.3.1 above), and/or (b) conversely, Landlord shall timely rebate any amounts payable to Tenant pursuant to Section 6.3.2 (as a result of any overpayments under Section 6.3.1 above) provided that no Tenant Default existed at the expiration or earlier termination of this Lease that has not thereafter been cured.

6.4 Review of Annual Reconciliation . Provided that Tenant is not then in default with respect to its obligations under this Lease beyond any applicable cure period and provided further that Tenant strictly complies with the provisions of this Section 6.4 , Tenant shall have the right, at Tenant's sole cost and expense and upon fifteen (15) days prior Notice (" Review Notice ") to Landlord delivered no later than sixty (60) days after an Annual Reconciliation is delivered to Tenant, to reasonably review or audit Landlord's supporting books and records (at Landlord's manager's corporate offices or, upon Tenant's request and at Tenant's sole cost and expense, copies of same shall be made available by Landlord to Tenant) for any portion of the Operating Expenses or Real Property Taxes for the particular year covered by such Annual Reconciliation, in accordance with the procedures set forth in this Section 6.4 . To the extent that any amounts specified in such Annual Reconciliation were not previously paid, Tenant shall pay all such amounts to Landlord simultaneously with Tenant's delivery the Review Notice. Any review or audit of records under this Section 6.4 shall be at the sole expense of Tenant, shall be conducted by independent certified public accountants of national standing which are not compensated on a contingency fee or similar basis relating to the results of such review or audit and shall be completed within sixty (60) days after Landlord provides Tenant with access to Landlord's supporting books and records. Tenant shall, within thirty (30) days after completion of any such review or audit, deliver Notice to Landlord specifying the items described in the Annual Reconciliation that are claimed to be incorrect by such review or audit (" Dispute Notice "). The right of Tenant under this Section 6.4 may only be exercised once for each year covered by any Annual Reconciliation, and if Tenant fails to deliver a Review Notice within the sixty (60) day period described above or a Dispute Notice within the thirty (30) day period described above, or if Tenant fails to meet any of the other above conditions of exercise of such right, the right of Tenant to review or audit a particular Annual Reconciliation (and all of Tenant's rights to make any claim relating thereto) under this Section 6.4 shall automatically be deemed waived by Tenant. Tenant acknowledges and agrees that any nonpublic records of Landlord reviewed or audited under this Section 6.4

(and the information contained therein) constitute confidential information of Landlord, which shall not be disclosed other than to Tenant's accountants performing the review or audit and principals of Tenant who receive the results of the review or audit . If Landlord disagrees with Tenant's contention that an error exists with respect to the Annual Reconciliation in dispute, Landlord shall have the right to cause another review or audit of that portion of the Annual Reconciliation to be made by a reputable, neutral firm of independent certified public accountants of good national standing selected by Landlord (" Landlord's Accountant "). In the event of a disagreement between the two accounting firms, the review or audit of Landlord's Accountant shall be deemed to be correct and shall be conclusively binding on both Landlord and Tenant. In the event that it is finally determined pursuant to this Section 6.4 that a particular Annual Reconciliation overstated amounts payable by Tenant under this Article 6 with respect to the applicable year by more than five percent (5%), Landlord shall reimburse Tenant for the reasonable cost s of Tenant's accountant and Landlord shall be liable for the costs of Landlord's Accountant . In all other cases, Tenant shall reimburse Landlord for the reasonable costs of Landlord's Accountant .

ARTICLE 7

LETTER OF CREDIT

7.1 Letter of Credit . Within five (5) business days after the Effective Date, Tenant shall deposit with Landlord the Letter of Credit (as defined in Exhibit "D") in the amount of One Hundred Twenty-Six Thousand Eight Hundred Forty-Five and 00/100 Dollars ($126,845.00), subject to increase as set forth herein. The Letter of Credit shall comply with the requirements of Exhibit "D" attached hereto and incorporated by reference herein. If Tenant shall fail to deliver the Letter of Credit in such amount and in such form on or before the date which is five (5) business days after the Effective Date, Landlord shall have the right to terminate this Lease by delivery of Notice thereof to Tenant at any time prior to Tenant's delivery of such Letter of Credit to Landlord, and Landlord shall have no obligation to commence any work that Landlord is required to perform under the Work Letter Agreement or to tender delivery of the Premises to Tenant prior to Tenant's delivery of such Letter of Credit to Landlord. On or prior to June 1, 2017, Tenant shall cause the amount of the Letter of Credit to be increased (by way of an amendment to or a replacement of the original Letter of Credit) to Two Hundred Fifty-Three Thousand Six Hundred Ninety and 00/100 Dollars ($253,690.00). On or prior to date which is the earlier of (a) November 1, 2017, and (b) the Commencement Date, Tenant shall cause the amount of the Letter of Credit to be increased (by way of an amendment to or a replacement of the then-current Letter of Credit) to Five Hundred Thousand and 00/100 Dollars ($500,000.00). As used in this Lease, the " Letter of Credit Amount " shall mean the then applicable amount of the Letter of Credit as required by this Section 7.1 (and outlined in Section 1.14 above). Tenant shall be solely responsible for any costs related to any amendment, replacement or transfer of the Letter of Credit.

7.2 Reserved .

ARTICLE 8

USE

8.1 General . Tenant shall use the Premises for the Permitted Use set forth in Section 1.16 above, and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord. Nothing contained herein shall be deemed to give Tenant any exclusive right to such use in the Project or any portion thereof (excluding only the Premises).

8.2 Laws/CC&R's .

8.2.1. Tenant shall not use or occupy the Premises in violation of any applicable laws, regulations, rules, orders, statutes or ordinances of any Governmental Authority, office, board or private entity in effect on or after the Effective Date and applicable to the Project or the use or occupancy of the Project, including, without limitation, the rules, regulations and requirements of the Pacific Fire Rating Bureau, and of any similar body, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) (" ADA ") and Hazardous Material Laws (as defined in Section 8.3.7 below) (collectively, " Laws ") or in violation of any government-issued permit for the Building or Project or any of the Rules and Regulations (as defined below), and shall, upon Notice from Landlord,

discontinue any use of the Premises which is declared by any Governmental Authority having jurisdiction to be a violation of any Laws, or of any government-issued permit for the Building or Project. On or before the Commencement Date, Landlord, at Landlord's sole cost and expense, shall cause the Project, the Building and the Premises to comply with all applicable Laws (including, but not limited to, any obligation imposed pursuant to the ADA). Notwithstanding the foregoing, in addition to Landlord's delivery of the Project, the Building and the Premises in compliance with all applicable Laws (including, but not limited to, any obligation imposed pursuant to the ADA) pursuant to the immediately preceding sentence, Tenant shall comply with any direction of any Governmental Authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any obligation (including, but not limited to, any obligation imposed pursuant to the ADA), upon Tenant or Landlord with respect to the Premises or with respect to the use or occupancy thereof; provided, however, unless resulting from an Alteration performed by Tenant or by Tenant's specific use of the Premises (as opposed to general office and laboratory/research and development use), Tenant shall not be responsible for any obligation imposed by applicable Laws (including, but not limited to, any obligation imposed pursuant to the ADA) after completion of the initial Tenant Improvements with respect to the Common Areas of the Building and the Premises (except its prorata share of compliance costs included in Operating Expenses). Tenant shall comply with all rules, orders, regulations and requirements of the Pacific Fire Rating Bureau or any other organization performing a similar function. Tenant shall not do or permit to be done in or about the Premises anything which causes the insurance on the Premises, the Building or the Project or any portion thereof to be canceled or the cost thereof increased. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for any insurance policy by reason of Tenant's failure to comply with the provisions of this Section 8.2 . In determining whether increased premiums are a result of Tenant's use of the Premises, a schedule issued by the organization computing the insurance rate on the Project or the Tenant Improvements showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. Tenant shall promptly comply with all reasonable requirements of the insurance authority or any present or future insurer relating to the Premises. Tenant shall not do or permit anything to be done in or about the Premises which will in any way unreasonably obstruct or interfere with the rights of Landlord or other tenants or occupants of the Building, the Parking Area or the Project, or injure them, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises or the Project. Tenant shall comply with all restrictive covenants and obligations created by private contracts that affect the use and operation of the Premises, the Building, the Common Areas or any other portion of the Project (provided that Tenant has received notice thereof) . Tenant shall not commit or suffer to be committed any waste in or upon the Premises or the Project and shall keep the Premises in first class repair and appearance. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure (except with respect to the temporary or permanent certificate of occupancy and any license or permit required to complete the Tenant Improveme n t s) , maintain and comply with the terms and conditions of each such license or permit.

Without limiting the generality of the foregoing:

(A) Landlord and Tenant agree to cooperate, and Tenant shall use its commercially reasonable efforts to participate in governmentally mandated regulations or voluntary traffic management programs applicable to businesses located in the area or to the Project, and, initially, shall encourage and support the use of van and car pooling and transit systems by employees and shall encourage and support staggered and flexible working hours for employees to the extent consistent with Tenant's business (as determined by Tenant in its reasonable discretion). Neither this Section 8.2.1(A) nor any other provision of this Lease, however, is intended to or shall create any rights or benefits in any other person, firm, company, Governmental Authority or the public. Upon Tenant's failure to comply with any governmentally mandated regulations pursuant to this Section 8.2.1(A) within ten (10) days after written notice from Landlord, Landlord may suspend Tenant's parking privileges in addition to taking such other remedies as may be available to a landlord against a defaulting tenant.

(B) Landlord and Tenant agree to cooperate and comply with any and all applicable guidelines or controls imposed upon either Landlord or Tenant by any Governmental Authority or by any energy conservation association to which Landlord is a party concerning energy management

(C) All costs, fees, assessments and other charges paid by Landlord to any Governmental Authority or voluntary association in connection with any program of the types described in Sections 8.2.1(A) and

8.2.1(B) above , and all costs and fees paid by Landlord to any G overnmental A uthority or reasonable out-of-pocket cost and fees paid to a third party pursuant to or to effect such program, shall be included in Operating Expenses for the purposes of Article 6 , whether or not specifically listed in such Article 6 .

(D) Tenant shall be liable for all penalties, noncompliance costs or other losses, costs or expenses incurred by Landlord primarily as a result of Tenant's failure to comply with any of the provisions of Sections 8.2.1(A) through 8.2.1(C) above. Any such amount shall be payable by Tenant to Landlord within ten (10) business days after Landlord's demand therefor as Additional Rent. Failure of Tenant to pay any amount due pursuant to this Section 8.2.1(D) when due shall be deemed a Tenant Default pursuant to this Lease.

8.2.2. Tenant shall be responsible for all structural engineering required to determine structural load for any of Tenant's furniture, fixtures, equipment, other personal property, Alterations and Tenant Improvements; provided that Landlord reserves the right to prescribe the weight and position of all file cabinets, safes and heavy equipment which Tenant desires to place in the Premises so as to properly distribute the weight thereof. Further, Tenant's business machines and mechanical equipment which cause vibration or unreasonable noise that may be transmitted to the Building structure or to any other space in the Building shall be so installed, maintained and used by Tenant as to eliminate such vibration or unreasonable noise.

8.3 Hazardous Materials .

8.3.1. Tenant shall not cause or permit any Hazardous Materials (as defined in Section 8.3.7 below) to be brought upon, kept or used in or about the Premises, the Building or the Project in violation of applicable Laws by Tenant or any of its employees, agents, representatives, contractors or invitees (collectively with Tenant, each a " Tenant Party "). If (a) Tenant breaches such obligation, (b) the presence of Hazardous Materials as a result of such a breach results in contamination of the Project, any portion thereof, or any adjacent property, (c) contamination of the Premises otherwise occurs during the Term or any extension or renewal hereof or holding over hereunder, or (d) contamination of the Project occurs as a result of Hazardous Materials that are placed on or under or are released into the Project by a Tenant Party, then Tenant shall, except to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents, indemnify, save, defend (at Landlord's option and with counsel reasonably acceptable to Landlord) and hold the Landlord Indemnified Parties (as defined in Section 22.1.2 below) harmless from and against any and all Claims (as defined in Article 20 below) of any kind or nature, including (i) diminution in value of the Project or any portion thereof, (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Project, (iii) damages arising from any adverse impact on marketing of space in the Project or any portion thereof and (iv) sums paid in settlement of Claims that arise before, during or after the Term as a result of such breach or contamination. This indemnification by Tenant includes costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any Governmental Authority because of Hazardous Materials present in the air, soil or groundwater above, on, under or about the Project. Without limiting the foregoing, if the presence of any Hazardous Materials in, on, under or about the Project, any portion thereof or any adjacent property caused by the acts or omissions of any Tenant Party results in any contamination of the Project, any portion thereof or any adjacent property, then Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Project, any portion thereof or any adjacent property to its respective condition existing prior to the time of such contamination, except to the extent caused or exacerbated by any Landlord Indemnified Party; provided that Landlord's written approval of such action shall first be obtained, which approval Landlord shall not unreasonably withhold, condition or delay; and provided, further, that it shall be reasonable for Landlord to withhold its consent if such actions could have a material adverse long-term or short-term effect on the Project, any portion thereof or any adjacent property. Tenant's obligations under this Section shall not be affected, reduced or limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant under workers' compensation acts, disability benefit acts, employee benefit acts or similar legislation. Notwithstanding anything to the contrary in this Lease, Tenant shall have no liability, responsibility, duty or obligation for (A) any pre-existing Hazardous Materials conditions to the extent not caused, contributed to or exacerbated by a Tenant Party, (B) any Hazardous Materials conditions outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, (C) any migration of Hazardous Materials into or under the Premises from areas outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, or (D) any release of Hazardous Materials to the extent caused, contributed to or exacerbated by Landlord or Landlord's employees, agents or representatives. Landlord represents and warrants that, as of the Effective Date, to

Landlord's knowledge, no Hazardous Materials have been used, released or stored at the Premises or the Project in violation of any Hazardous Materials Laws applicable to the Premises or the Project. Any representations and warranties made to "Landlord's knowledge" (or words of similar meaning) in this Lease (i) are limited to the current actual knowledge of Steven Bollert, without any obligation or duty to inquire or make any independent investigation regarding the subject matter of such representations and warranties, and (ii) do not encompass any imputed or constructive knowledge. Tenant acknowledges that Steven Bollert is named solely for the purpose of defining and narrowing the scope of Landlord's knowledge and not for the purpose of imposing any liability on such individual or creating any duties running from such individual or any of Landlord's members to Tenant.

8.3.2. Landlord acknowledges that it is not the intent of this Article to prohibit Tenant from operating its business for the Permitted Use. Tenant may operate its business according to the custom of Tenant's industry so long as the use or presence of Hazardous Materials is strictly and properly monitored in accordance with applicable Laws. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord (a) a list identifying each type of Hazardous Material to be present at the Premises that is subject to regulation under any environmental applicable Laws (other than customary quantities of typical office and cleaning supplies, provided no permits or approvals from, and no notice or disclosure to, any Governmental Authorities is required in connection with the presence of such supplies at the Premises), (b) a list of any and all approvals or permits from Governmental Authorities required in connection with the presence of such Hazardous Material at the Premises and (c) correct and complete copies of (i) notices of violations of applicable Laws related to Hazardous Materials and (ii) plans relating to the installation of any storage tanks to be installed in, on, under or about the Project (provided that installation of storage tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent Landlord may withhold in its sole and absolute discretion) and closure plans or any other documents required by any and all Governmental Authorities for any storage tanks installed in, on, under or about the Project for the closure of any such storage tanks (collectively, " Hazardous Materials Documents "). Tenant shall deliver to Landlord updated Hazardous Materials Documents, within fourteen (14) days after receipt of a written request therefor from Landlord, not more often than once per year, unless (m) there are any changes to the Hazardous Materials Documents or (n) Tenant initiates any Alterations or changes its business, in either case in a way that involves any material increase in the types or amounts of Hazardous Materials. For each type of Hazardous Material listed, the Hazardous Materials Documents shall include (t) the chemical name, (u) the material state (e.g., solid, liquid, gas or cryogen), (v) the concentration, (w) the storage amount and storage condition (e.g., in cabinets or not in cabinets), (x) the use amount and use condition (e.g., open use or closed use), (y) the location (e.g., room number or other identification) and (z) if known, the chemical abstract service number. Notwithstanding anything in this Section to the contrary, Tenant shall have the right to redact any information contained within any Hazardous Materials Documents which is of a proprietary or privileged nature and is not information otherwise within the public domain. Landlord may, at Landlord's expense, cause the Hazardous Materials Documents to be reviewed by a person or firm qualified to analyze Hazardous Materials to confirm compliance with the provisions of this Lease and with applicable Laws. In the event that a review of the Hazardous Materials Documents indicates non-compliance with this Lease or applicable Laws, Tenant shall, at its expense, diligently take steps to bring its storage and use of Hazardous Materials into compliance. Notwithstanding anything in this Lease to the contrary or Landlord's review into Tenant's Hazardous Materials Documents or use or disposal of hazardous materials, however, Landlord shall not have and expressly disclaims any liability related to Tenant's or other tenants' use or disposal of Hazardous Materials, it being acknowledged by Tenant that Tenant is best suited to evaluate the safety and efficacy of its Hazardous Materials usage and procedures.

8.3.3. At any time, and from time to time, Landlord shall have the right to conduct appropriate tests of the Project or any portion thereof to demonstrate that Hazardous Materials are present or that contamination has occurred due to the acts or omissions of a Tenant Party. With respect to the Premises, except in the event of an emergency, Landlord shall provide Tenant with reasonable prior written notice of any such tests and shall use commercially reasonable efforts to minimize any interference with Tenant's business as a result of such tests. Tenant shall pay all reasonable costs of such tests to the extent such tests reveal that Hazardous Materials exist at the Project in violation of Tenant's obligations under this Lease.

8.3.4. Tenant shall not install or utilize any underground or other storage tanks storing Hazardous Materials on the Premises without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. Subject to the foregoing, if underground or other storage tanks storing Hazardous Materials installed or utilized by Tenant are located on the Premises, or are hereafter placed on the Premises by

Tenant (or by any other party, if such storage tanks are utilized by Tenant), then Tenant shall monitor the storage tanks, maintain appropriate records, implement reporting procedures, properly close any underground storage tanks, and take or cause to be taken all other steps necessary or required under the a pplicable Laws.

8.3.5. Tenant shall promptly report to Landlord any actual or suspected presence of mold or water intrusion at the Premises.

8.3.6. Tenant's obligations under this Section 8.3 shall survive the expiration or earlier termination of the Lease. During any period of time needed by Tenant or Landlord after the termination of this Lease to complete the removal from the Premises of any Hazardous Materials, Tenant shall be deemed a holdover tenant and subject to the provisions of Section 8.3 .

8.3.7. As used in this Lease, the term " Hazardous Material " means any toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous substance, material or waste that is or becomes regulated by applicable Laws or any Governmental Authority, and the term " Hazardous Material Laws " means and includes all now and hereafter existing statutes, laws, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, policies and requirements by any federal, state or local governmental authority regulating, relating to, or imposing liability or standards of conduct concerning public health and safety, the environment or any Hazardous Material, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), and California Health and Safety Code (Sections 25100, 25249.5, 25316 and 39000, et seq. in each case).

8.3.8. Notwithstanding anything to the contrary in this Lease, Landlord shall have sole control over the equitable allocation of control areas (as defined in the California Building Standards Code) within the Project for the storage of Hazardous Materials. Without limiting the foregoing, if the use of Hazardous Materials by Tenant is such that Tenant utilizes fire control areas in the Project in excess of Tenant's Percentage of the Building or the Project, as applicable, then Tenant shall, at its sole cost and expense and upon Landlord's written request, establish and maintain a separate area of the Premises classified by the California Building Standards Code as a "Group H" occupancy area for the use and storage of Hazardous Materials, or take such other action as is necessary to ensure that its share of the fire control areas of the Building and the Project is not greater than Tenant's Percentage of the Building or the Project, as applicable. Notwithstanding anything in this Lease to the contrary, Landlord shall not have and expressly disclaims any liability related to Tenant's or other tenants' use or disposal of fire control areas, it being acknowledged by Tenant that Tenant and other tenants are best suited to evaluate the safety and efficacy of its Hazardous Materials usage and procedures.

8.4 Odors and Exhaust . Tenant acknowledges that Landlord would not enter into this Lease with Tenant unless Tenant assured Landlord that under no circumstances will any other occupants of the Building or the Project (including persons legally present in any outdoor areas of the Project) be subjected to material levels of odors or fumes (whether or not noxious) that can be detected outside the Premises, and that the Building and the Project will not be damaged by any exhaust, in each case from Tenant's operations. Landlord and Tenant therefore agree as follows:

8.4.1. Tenant shall not cause or permit (or conduct any activities that would cause) any release of any material levels of odors or fumes of any kind from the Premises.

8.4.2. If the Building has a ventilation system that, in Landlord's judgment, is adequate, suitable, and appropriate to vent the Premises in a manner that does not release material levels of odors affecting any indoor (excluding the Premises) or outdoor part of the Project, Tenant shall vent the Premises through such system. If Landlord at any time determines that any existing ventilation system is inadequate, or if no ventilation system exists, Tenant shall in compliance with applicable Laws vent all fumes and material levels of odors from the Premises (and remove material levels of odors from Tenant's exhaust stream) as Landlord requires. The placement and configuration of all ventilation exhaust pipes, louvers and other equipment shall be subject to Landlord's approval. Tenant acknowledges Landlord's legitimate desire to maintain the Project (indoor and outdoor areas) in an odor-free manner, and Landlord may require Tenant to abate and remove all material levels of odors that can be detected outside the Premises in a manner that goes beyond the requirements of applicable Laws.

8.4.3. Tenant shall, at Tenant's sole cost and expense, provide odor eliminators and other devices (such as filters, air cleaners, scrubbers and whatever other equipment may in Landlord's judgment be necessary or appropriate from time to time) to completely remove, eliminate and abate any material levels of odors, fumes or other substances in Tenant's exhaust stream that, in Landlord's reasonable judgment, emanate from Tenant's Premises. Any work Tenant performs under this Section shall constitute Alterations.

8.4.4. Tenant's responsibility to remove, eliminate and abate odors, fumes and exhaust shall continue throughout the Term. Landlord's construction of the Tenant Improvements shall not preclude Landlord from requiring additional measures to eliminate material levels of odors, fumes and other adverse impacts of Tenant's exhaust stream (as Landlord may designate in Landlord's reasonable discretion). Tenant shall install additional equipment as Landlord requires from time to time under the preceding sentence. Such installations shall constitute Alterations.

8.4.5. If Tenant fails to install satisfactory odor control equipment within ten (10) business days after Landlord's demand made at any time, then Landlord may, without limiting Landlord's other rights and remedies, require Tenant to cease and suspend any operations in the Premises that, in Landlord's determination, cause material levels of odors, fumes or exhaust that can be detected outside the Premises. For example, if Landlord determines that Tenant's production of a certain type of product causes odors, fumes or exhaust, and Tenant does not install satisfactory odor control equipment within ten (10) business days after Landlord's request, then Landlord may require Tenant to stop producing such type of product in the Premises unless and until Tenant has installed odor control equipment satisfactory to Landlord.

ARTICLE 9

MOLD

Tenant agrees to maintain the Premises in a manner that prevents the occurrence of an infestation of mold, mildew, microbial growths, and any associated mycotoxins in the Premises, and shall, except as expressly provided otherwise in this Lease, comply, at a minimum, with the following: (a) Tenant agrees to fix/abate any water intrusion in the Premises immediately after obtaining knowledge of same; (b) Tenant agrees to use all reasonable care to close all windows and other openings in the Premises to prevent outdoor water from penetrating into the interior unit; (c) Tenant agrees to clean and dry any visible moisture on windows, walls, and other surfaces, including personal property, as soon as reasonably possible; (d) Tenant agrees to keep the Premises free of dirt and debris that can harbor mold; (e) Tenant agrees to regularly clean and sanitize kitchens and other surfaces within the Premises where water, moisture condensation, and mold can collect; (f) Tenant agrees not to unreasonably interfere with regular air flow and circulation throughout the Premises; (g) Tenant agrees to limit the indoor watering of plants; (h) Tenant agrees to prevent the overflow or release of water from bathrooms or kitchens, including but not limited to toilets, sinks, kitchen appliances, and other receptacles of water; (i) Tenant agrees not to obstruct fresh air supply to furnace, air conditioner or heater ducts; (j) Tenant agrees to maintain and not obstruct ventilation at all locations in the Premises; (k) Tenant agrees to prevent the clogging of all plumbing within the Premises; (l) Tenant agrees not to engage in any conduct that promotes or creates mold growth; (m) Tenant agrees to report the following to Landlord within forty-eight (48) hours after obtaining knowledge of same: (i) any non-working fan, heater, air conditioner or ventilation system; (ii) plumbing leaks, drips, sweating pipes, wet spots; (iii) overflows from bathroom, kitchen, or other facilities, including, but not limited to, tubs, showers, shower enclosures, toilets, sinks, kitchen appliances, or other receptacles of water, especially in cases where the overflow may have permeated walls, floors, ceilings or fixtures; (iv) water intrusion of any kind; (v) any mold or black or brown spots or moisture on surfaces inside the Premises; (vi) broken plumbing systems or standing water near structures within the Premises; and (vii) any odors consistent with mold growth within the Premises. Tenant agrees not to commence any mold investigation, testing, remediation or repair without first obtaining the prior written consent of Landlord. If Landlord consents to any mold investigation, remediation or repair by Tenant, Tenant agrees to not use any methods of mold investigation, testing, remediation and repair that are speculative and not generally accepted within the scientific community, and Landlord reserves the right to approve any and all third parties retained by Tenant to conduct any such mold investigation, testing, remediation and repair. As of the Effective Date such speculative and generally unaccepted methods of investigation, testing, remediation and repair include: (A) any use of settled dust vacuum sampling; (B) any use of interior wall cavity air sampling; (C) Tenant's use of do-it-yourself mold investigation kits; and (D) use of any other methods that have not been peer reviewed and generally accepted within the scientific community.

ARTICLE 10

NOTICES

10.1 Method of Delivery . Any notice, consent, approval or objection required or permitted by this Lease (a " Notice ") shall be in writing and may be delivered: (a) in person (by hand or by messenger or courier service) or (b) by certified or registered mail or United States Postal Service Express Mail, with postage prepaid, or (c) by a nationally recognized overnight delivery service that provides delivery verification, or (d) by facsimile transmission or email (if a facsimile number or email address, as applicable, is provided), addressed to Tenant at the Premises and to Landlord at each of the addresses designated in Section 1.2 , and shall be deemed sufficiently given if served in a manner specified in this Article 10 . Either party may specify a different address for Notice purposes by Notice to the other.

10.2 Receipt of Notices . Any Notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by United States Postal Service Express Mail or overnight delivery service that guarantees next day delivery shall be deemed given on the next business day after delivery of the same to the United States Postal Service or overnight delivery service. If any Notice is transmitted by facsimile transmission or email, the same shall be deemed served or delivered upon telephone or email confirmation of receipt of the transmission thereof, provided a copy is also delivered on or before the next business day via one of the methods in Section 10.1(a)-(c) above. If any Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

10.3 Statutory Service of Notice . When a statute permits, or requires, service of a notice in a particular manner, service of that notice (or a similar Notice permitted, or required, by this Lease) in the manner permitted, or required, by this Article 10 shall replace and satisfy the statutory service-of-notice procedures, including, but not limited to, those required by California Code of Civil Procedure Section 1162, or any similar or successor statute.

ARTICLE 11

BROKERS

Landlord and Tenant each warrant that it has had no dealings with any real estate broker, finder or agent in connection with the negotiation of this Lease except for the broker(s) whose name(s) is (are) set forth in Section 1.16 , whose commission(s) shall be payable by Landlord pursuant to one or more separate agreements, and that it knows of no other real estate broker, finder or agent who is or might be entitled to a commission in connection with this Lease. Each party shall be solely responsible for the payment of any fee due to any other broker, finder, agent or other party claiming under such party and shall indemnify and hold the other party free and harmless against any liability in respect thereto, including attorneys' fees and costs incurred by such other party in connection therewith.

ARTICLE 12

HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of Landlord, Tenant shall become a Tenant at sufferance, at a Basic Rent equal to one hundred fifty percent (150%) of the Rent payable during the last month of the Term, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of Rent after such expiration or earlier termination without Landlord's prior written consent shall not waive Landlord's right to evict Tenant without thirty (30) days prior written notice. The foregoing provisions of this Article 12 are in addition to and do not affect Landlord's right of reentry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease without Landlord's written consent, Tenant shall indemnify, defend and hold Landlord harmless from all Claims, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender, lost profits and other

consequential damages, and any and all reasonable attorneys' fees and costs incurred by Landlord in connection Tenant's failure to surrender the Premises in accordance with the provisions of this Lease on the expiration or earlier termination of this Lease.

ARTICLE 13

TAXES ON TENANT'S PROPERTY

13.1 Personal Property and Fixtures . Tenant shall be liable for and shall pay, at least ten (10) days before delinquency, all taxes levied against any of Tenant's Personal Property (defined below) placed by Tenant or any Tenant Party in or about the Premises. If any such taxes on Tenant's Personal Property are levied against Landlord or Landlord's property, or if the assessed value of the Premises, Building or Project is increased by the inclusion therein of a value placed upon such Tenant's Personal Property, and if Landlord, after Notice to Tenant, pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof (but only under proper protest if so requested by Tenant), Tenant shall, upon demand, repay to Landlord the taxes so levied against Landlord, or the portion of such taxes resulting from such increase in the assessment.

13.2 Tenant Improvements . If the Leasehold Improvements (defined below) in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's "Building Standard Improvements" (as defined in the Work Letter Agreement) for other space in the Building are assessed, then the real property taxes and assessments levied against the Building or Project by reason of such excess assessed valuation shall be deemed to be taxes levied against Tenant's Personal Property and shall be governed by the provisions of Section 13.1 above. If the records of the County Assessor are available and sufficiently detailed to serve as a basis for determining whether the Leasehold Improvements are assessed at a higher valuation than Landlord's "Building Standard Improvements", such records shall be binding on both Landlord and Tenant. If the records of the County Assessor are not available or sufficiently detailed to serve as a basis for making said determination, the actual cost of construction shall be used.

13.3 Additional Taxes . Tenant shall pay to Landlord, within ten (10) days of Landlord's demand therefor, and in such manner and at such times as Landlord shall direct from time to time by written notice to Tenant, any excise, sales, privilege or other tax, assessment or other charge (other than Real Property Taxes, income or franchise taxes and any late fees or penalties resulting from Landlord's late payment thereof) imposed, assessed or levied by any Governmental Authority upon, and paid by, Landlord on account of: (a) the Rent payable by Tenant hereunder (or any other benefit received by Landlord hereunder), including, without limitation, any gross receipts tax, license fee or excise tax levied by any Governmental Authority, (b) this Lease, Landlord's business as a lessor hereunder, and the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of any portion of the Premises (including, without limitation, any applicable possessory interest taxes), (c) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises, or (d) otherwise in respect of or as a result of the agreement or relationship of Landlord and Tenant hereunder.

ARTICLE 14

CONDITION OF PREMISES

14.1 As Is . Tenant acknowledges and agrees that: (a) Tenant has inspected, or has had the opportunity to inspect, the Project, the Building and the Premises and, subject to Landlord's obligations under this Lease, acknowledges that the same are acceptable for Tenant's intended use and agrees to accept them in their "AS IS, WHERE IS" condition, (b) except as expressly provided in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Building, the Parking Area or any other portion of the Project or with respect to the condition thereof or the suitability of the same for the conduct of Tenant's business, (c) except as expressly provided in the Work Letter Agreement and Section 16.2 below, and subject to the express representations and warranties of Landlord set forth in this Lease, Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, or any portion of the Building or Project and (d) except as expressly provided in this Lease, Landlord shall have no obligation to provide Tenant with any allowance, rent credit or abatement in connection with Tenant's entering into this Lease. The taking

of possession of the Premises by Tenant shall conclusively establish that the Project, the Building and the Premises were at such time in good order and clean condition and that Landlord shall have discharged all of its obligations under the Work Letter Agreement (subject to any punch list items as set forth in the Work Letter Agreement) , and the execution of this Lease by Tenant shall conclusively establish that the Premises, the Building, the Project and the Parking Area were in good and sanitary order, condition and repair at such time, except for latent defects, if any. Without limiting the foregoing, Tenant's execution of the Memorandum of Terms shall constitute a specific acknowledgment and acceptance of the various start-up inconveniences that may be associated with the use of the Building, the Parking Area and other portions of the Project, such as certain construction obstacles (e.g., scaffolding), delays in use of freight elevator service, unavailability of certain elevators for Tenant's use, uneven air-conditioning services and other typical conditions incident to recently constructed (or recently modified) office and laboratory/research and development buildings. Tenant (for itself and all other claiming through Tenant) hereby irrevocably waives and releases its right to terminate this Lease under Section 1932(l) of the California Civil Code.

14.2 Limited Warranty . Notwithstanding the foregoing provisions of Section 14.1 , Landlord shall deliver the Premises and all Building Systems (as that term is defined in Section 15.1 below) servicing the Premises to Tenant in good working order and condition as of the Commencement Date. In the event that the Building Systems servicing the Premises fail to be in good working order or condition at any time during the first twelve (12) months of the Initial Term and Tenant delivers Notice thereof to Landlord within such twelve (12) month period, then Landlord shall cure such failure within a reasonable period of time after receiving such Notice and the cost thereof shall be at Landlord's sole cost and expense and shall not be included in Operating Expenses, except to the extent such failure is caused by Tenant or any Tenant Party, in which event Tenant shall reimburse Landlord for the cost to cure such failure.

ARTICLE 15

ALTERATIONS

15.1 Alterations and Major Alterations . Except for Permitted Alterations, Tenant shall make no alterations, additions, or improvements in or to the Premises (collectively, the " Alterations ") without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed for all Alterations other than Major Alterations (which shall be granted in Landlord's sole discretion), and then only by licensed contractors or mechanics approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed (provided that any contractors performing any Major Alterations shall be subject to approval by Landlord in its sole and absolute discretion). Tenant shall submit to Landlord plans and specifications for any proposed Alterations to the Premises, and may not make such Alterations until Landlord has approved such plans and specifications and the contractor performing any Alterations in writing. Tenant shall construct such Alterations in accordance with the plans and specifications approved by Landlord and in compliance with all applicable Laws, and shall not amend or modify such plans and specifications without Landlord's prior written consent. If any proposed Alterations require the consent or approval of any lessor of a superior lease or the holder of a mortgage encumbering the Premises, Tenant acknowledges that such consent or approval must be secured prior to the construction of such Alterations. Tenant agrees not to construct or erect partitions or other obstructions that might interfere with Landlord's free access to mechanical installations or service facilities of the Building or interfere with the moving of Landlord's equipment to or from the enclosures containing said installations or facilities. All Alterations shall be done at such times and in such manner as Landlord may from time to time reasonably designate. Tenant will pay the entire cost and expense of all Alterations (except as expressly provided otherwise in this Lease), including, without limitation, for any painting, restoring or repairing of the Premises or the Building necessitated by the Alterations, and Landlord's actual out-of-pocket third party review and Landlord's supervision fee in an amount equal to five percent (5%) of the cost of the Alterations in question (except for Permitted Alterations). Tenant will also obtain and/or require: (a) builder's "all-risk" insurance (or the equivalent thereof) in an amount at least equal to the replacement value of the Alterations; (b) liability insurance insuring Tenant and each of Tenant's contractors against construction related risks in at least the form, amounts and coverage required of Tenant under Article 22 ; and (c) if requested by Landlord, demolition (if applicable) and payment and performance bonds in an amount not less than the full cost of the Alterations. The insurance policies described in clause (b) of this Section 15.1 must name Landlord, Landlord's lender (if any), Bollert/LeBeau Inc. (" Property Manager ") and other parties reasonably requested by Landlord as additional insureds, specifically including completed operations. Tenant covenants and agrees that all Alterations done by Tenant shall be performed in full compliance with all Laws. If any Governmental

A uthority requires any alterations or modifications to the Building or the Premises as a result of Tenant's Permitted Use of the Premises or as a result of any Alteration to the Premises made by or on behalf of Tenant, Tenant will pay the cost of all such alterations or modifications. If any such Alterations involve any modifications to (i) the structural portions of the Building, (ii) the mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building (collectively, " Building Systems ") or (ii i) any portion of the Project outside of the interior of the Premises (a " Major Alteration "), Tenant agrees that it shall be reasonable for Landlord to withhold its consent to any such Major Alterations and it shall be reasonable for Landlord to condition its consent to any Major Alterations on Landlord making the Major Alterations, provided that Landlord may first require Tenant to deposit with Landlord an amount sufficient to pay the cost of the Major Alterations (including, without limitation, reasonable overhead and administrative costs). Before commencing any Alteration , Tenant shall give Landlord at least ten (10) days Notice of the proposed commencement of such Alteration and shall, if required by Landlord, deliver a copy of the completion and payment bond required by Landlord in form, substance and amount satisfactory to Landlord. " Permitted Alterations " means only usual and customary maintenance and repairs of Leasehold Improvements and Alterations if and to the extent that such maintenance, repairs and Alterations : (A) are not Major Alterations , (B) are in compliance with the Rules and Regulations and all applicable Laws , and (C) do not cost more than Twenty Thousand and 00/100 Dollars ($20,000.00) in each instance .

15.2 Removal of Alterations and Tenant's Personal Property . The Tenant Improvements together with all Alterations upon the Premises made by Tenant after the Commencement Date, including, without limitation, all wall coverings, built-in cabinet work, paneling and the like (collectively, " Leasehold Improvements "), shall, at Landlord's election, either be removed by Tenant or shall become the property of Landlord and shall remain upon, and be surrendered with, the Premises at the end of the Term hereof; provided, however, that if Landlord, by Notice to Tenant, requires Tenant to remove any such Leasehold Improvements, Tenant shall repair all damage resulting from such removal or, at Landlord's option, shall pay to Landlord the cost of such removal, as reasonably estimated by Landlord, prior to the expiration of the Term of this Lease. Notwithstanding the foregoing, Tenant shall not be required to, nor have the right to, remove the Tenant Improvements furnished pursuant to the Work Letter Agreement except for any and all cabling and those Tenant Improvements, if any, which are non-standard or non-customary office or laboratory improvements designated by Landlord in writing to Tenant no later than ten (10) business days after Substantial Completion of the Tenant Improvements. All articles of personal property and all business and trade fixtures, cabling, machinery and equipment, furniture and movable partitions owned by Tenant or any other Tenant Party or that are installed by or for Tenant or any other Tenant Party at its expense in the Premises (collectively, " Tenant's Personal Property ") shall be and remain the property of Tenant and shall be removed by Tenant prior to the expiration of the Term, and Tenant shall repair all damage to the Premises, if any, resulting from such removal, reasonable wear and tear excepted . If Tenant shall fail to remove any of the foregoing from the Premises prior to termination of this Lease for any cause whatsoever, Tenant shall be deemed to be holding over in the Premises without the consent of Landlord until such Tenant's Personal Property is removed from the Premises and Landlord may, at its option, remove the same in any manner that Landlord shall choose, and store the same without liability to Tenant for loss thereof. In such event, Tenant agrees to pay to Landlord upon demand, any and all expenses incurred in such removal (including court costs and attorneys' fees) and storage charges thereon, for any length of time that the same shall be in Landlord's possession or control. Landlord may, at its option, without Notice, sell such property, or any of the same, at a private sale and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale to any amounts due under this Lease from Tenant to Landlord and/or to all expenses, including attorneys' fees and costs, incident to the removal and/or sale thereof.

ARTICLE 16

REPAIRS

16.1 Tenant Obligations . Tenant shall, when and if needed, at Tenant's sole cost and expense and subject to Section 14.2 and Article 15 above, make all repairs to the Premises and every part thereof (including all non-structural parts, including, without limitation, the roof membrane located directly above the Premises) to maintain the Premises in the condition and repair that existed as of the Commencement Date, reasonable wear and tear excepted, and free from any Hazardous Materials. Except as expressly set forth in Section 14.2 above and Section 16.2 below, all Supplemental Equipment and all Building Systems exclusively serving the Premises shall be maintained, repaired and replaced as needed by Tenant at Tenant's sole cost and expense and Landlord shall have no liability for the operation, repair, maintenance or replacement of any Supplemental Equipment, nor shall Landlord

have any liability for the operation, repair or maintenance of any Building Systems exclusively serving the Premises. " Supplemental Equipment " means any items that are installed within the Premises by or at the direction of Tenant or that exclusively serve the Premises (other than Building Systems), including, without limitation: (A) any supplemental electrical (including lighting), mechanical, plumbing, heating, ventilation and air conditioning systems, fixtures and equipment; (B) any supplemental fire, life, safety or security systems, fixtures and equipment; and (C) all video, audio, communications or computer systems, fixtures and equipment (including cabling). Without limiting the foregoing, Tenant shall maintain, at its sole cost and expense, a contract for the regular maintenance and repair of the heating, ventilation and air conditioning systems, fixtures and equipment located in or exclusively serving the Premises. Landlord shall provide Tenant and its agents and contractors with access to the Building Systems that exclusively serve the Premises and any Supplemental Equipment to the extent reasonably required to fulfill Tenant's obligations under this Section 16.1 .

16.2 Landlord Obligations . Landlord shall maintain, repair and replace the structural portions of the Building (including, without limitation, the roof structure, slab and exterior walls), the Common Areas, the Parking Area and the Building Systems (other than Building Systems and/or components thereof exclusively serving the Premises, except as expressly set forth in Section 14.2 above), and, except as expressly set forth in Section 14.2 above, the costs incurred by Landlord in performing such maintenance, repairs and replacements shall be included in Operating Expenses to the extent permitted under Section 6.1 above. For purposes of clarification, Landlord shall have no obligation to repair, maintain or replace any part of the Premises, any Building Systems exclusively serving the Premises (except as expressly set forth in Section 14.2 above) or any Supplemental Equipment. Landlord shall not be liable for any failure to make any repairs or replacements or to perform any maintenance to the extent that the need for such repairs, replacements or maintenance is caused by Tenant's negligence or willful misconduct. Except as expressly provided in Sections 23.3 , 24.1 and 25.8 hereof, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, improvements or replacements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs and replacements at Landlord's expense under any Law now or hereafter in effect including Section 1941 and 1942 of the California Civil Code (as the same may be amended from time to time) and any successor statute and similar Law now or hereafter in effect.

ARTICLE 17

LIENS

Tenant shall not cause or permit to be filed against the Premises, the Building or the Project or of any portion thereof or against Tenant's leasehold interest in the Premises any mechanics', materialmen's or other liens, including without limitation any state, federal or local "superfund" or Hazardous Materials cleanup lien imposed as a result of the presence of Hazardous Materials in, on or about the Premises, the Building or any other portion of the Project. Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notices that it deems necessary for protection from such liens. Tenant shall discharge any lien filed against the Premises or against the Building for work claimed to have been done for, or materials claimed to have been furnished to, Tenant (excepting work performed by Landlord or materials furnished to Landlord in connection with such work), by bond or otherwise, within ten (10) business days after Tenant receives notice thereof, at the cost and expense of Tenant. If any such liens are filed and Tenant fails to discharge them pursuant to the foregoing sentence, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations hereunder, cause such lien(s) to be released by any means it shall deem proper, including payments in satisfaction of the claim giving rise to such lien or by obtaining a corporate statutory mechanic's lien release bond in an amount equal to one hundred fifty percent (150%) of such lien claim. Tenant shall: (a) pay to Landlord, immediately upon Notice from Landlord, any cost or expense, including, without limitation, attorneys' fees and costs, incurred by Landlord by reason of Tenant's failure to discharge any such lien, together with interest thereon at the maximum rate per annum permitted by Law from the date of such payment by Landlord and (b) shall indemnify, defend and hold the Landlord Indemnified Parties harmless from and against any liens.

ARTICLE 18

ENTRY BY LANDLORD

Landlord reserves and shall at any and all reasonable times and upon at least twenty-four (24) hours prior notice to Tenant (except in the case of an emergency) have the right to enter the Premises to supply any service to be provided by Landlord to Tenant hereunder, to inspect the same, to show the Premises to prospective purchasers, lenders, or investors and during the last twelve (12) months of the Term or following a default by Tenant to prospective tenants, to post notices of non-responsibility, to alter, improve or repair the Premises or any other portion of the Building and/or the Project, as provided in Section 2.4 above, or for any other reasonable purpose, all without being deemed guilty of any eviction of Tenant and without abatement of Rent. Landlord may, in order to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, for any loss of occupancy or quiet enjoyment of the Premises and for any other loss in, upon and about the Premises, the Building or the Project on account of Landlord's entry or work permitted by this Article 18 or by Section 2.4 above, except to the extent caused by Landlord's gross negligence or willful misconduct. Landlord shall at all times have and retain a key with which to unlock all doors in the Premises, excluding Tenant's vaults and safes. Landlord shall have the right to use any and all means that Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not be construed or deemed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises or any portion thereof, and, except to the extent caused by Landlord's gross negligence or willful misconduct, any damages caused on account thereof shall be paid by Tenant.

ARTICLE 19

UTILITIES AND SERVICES

19.1 Premises Utilities . Notwithstanding anything to the contrary in this Lease, Tenant shall pay for the cost of all water (including the cost to service, repair and replace reverse osmosis, de-ionized and other treated water), electricity, gas, heating, ventilation and air-conditioning (" HVAC "), light, power, telephone, internet service, cable television, other telecommunications and other utilities supplied to the Premises, together with any fees, surcharges and taxes thereon. All such utilities and services provided to the Premises that are separately metered shall be paid by Tenant directly to the supplier of such utilities or services. If any such utility is not separately metered to Tenant, Tenant shall pay Tenant's Percentage of all charges of such utility jointly metered with other premises as Additional Rent or, in the alternative, Landlord may, at its option, monitor the usage of such utilities by Tenant and charge Tenant with the cost of purchasing, installing and monitoring such metering equipment, which cost (amortized over the useful life of such equipment) shall be paid by Tenant in monthly installments as Additional Rent. Landlord may base its bills for utilities on reasonable estimates; provided that Landlord adjusts such billings promptly thereafter or as part of the next Annual Reconciliation to reflect the actual cost of providing utilities to the Premises. In the event that the Building or Project is less than fully occupied during a calendar year, Tenant acknowledges that Landlord may extrapolate utility usage that varies depending on the occupancy of the Building or Project (as applicable) to equal Landlord's reasonable estimate of what such utility usage would have been had the Building or Project, as applicable, been one hundred percent (100%) occupied during such calendar year; provided, however, that Landlord shall not recover more than one hundred percent (100%) of the cost of such utilities. Landlord may, in Landlord's sole but reasonable discretion, at any time and from time to time, contract, or require Tenant to contract, for utility services (including generation, transmission, or delivery of the utility service) with a utility service provider(s) of Landlord's choosing, provided that such requirement is applied consistently throughout the Project and the rates charged by such utility service provider are not materially greater than those charged by the previous utility service provider, and provided further that Tenant receives Tenant's Percentage of at least 300 tons of HVAC capacity and 3,000 amps of electrical capacity for the Building. Tenant shall fully cooperate with Landlord and any such utility service provider selected by Landlord. Tenant shall permit Landlord and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, risers, wiring, pipes, and meters. Tenant shall either pay or reimburse Landlord for all costs associated with any change of utility service which is required by Tenant's use of the Premises, including the cost of any new utility equipment, within ten (10) business days after Landlord's written demand for payment or

reimbursement. The costs associated with any change of utility service which is not required by Tenant's use of the Premises shall be paid by Landlord (subject to inclusion in Operating Expenses to the extent permitted under Article 6).

19.2 Janitorial Service . Tenant, at its sole cost and expense, shall enter into an agreement for regular janitorial services for the Premises with a company which is fully bonded and insured and approved by Landlord in its reasonable discretion. Tenant shall keep the Premises at all times in a clean and orderly condition, at Tenant's expense and to the reasonable satisfaction of Landlord. Unless otherwise agreed to by Landlord, no one other than persons approved by Landlord shall be permitted to enter the Premises for the purpose of providing janitorial or cleaning service.

19.3 Landlord Exculpation . Landlord's failure to furnish or cause to be furnished any service which Landlord is required or elects to provide hereunder shall not result in any liability to Landlord except to the extent caused by Landlord's gross negligence or willful misconduct. Landlord shall not be responsible or liable for any loss, damage, or expense that Tenant may incur as a result of any change of utility service, including any change that makes the utility supplied less suitable for Tenant's needs, or for any failure, interruption, stoppage, or defect in any utility service, except to the extent caused by Landlord's gross negligence or willful misconduct. In addition, Tenant shall not be entitled to any abatement or reduction of Rent (except as expressly set forth in Section 25.8 below), no eviction of Tenant shall result from and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease by reason of any such change, failure, interruption, stoppage or defect. In the event of any such failure, interruption, stoppage or defect of a service which Landlord is required to provide hereunder, Landlord shall use commercially reasonable diligence to cause service to be resumed promptly.

19.4 Limitations on Tenant's Utilities . Tenant shall not, without Landlord's prior written consent, use any device in the Premises (including data processing machines) that will in any way (a) increase the amount of ventilation, air exchange, gas, steam, electricity or water required or consumed in the Premises based upon Tenant's Percentage of the Building or Project (as applicable) beyond the existing capacity of the Building or the Project usually furnished or supplied for the Permitted Use or (b) exceed Tenant's Percentage of the Building's or Project's (as applicable) capacity to provide such utilities or services. If Tenant shall require utilities or services in excess of those usually furnished or supplied for tenants in similar spaces in the Building or the Project by reason of Tenant's equipment or extended hours of business operations, then Tenant shall first procure Landlord's consent for the use thereof, which consent shall not be unreasonably withheld, conditioned or delayed (except that Landlord may condition such consent upon the availability of such excess utilities or services), and Tenant shall pay as Additional Rent an amount equal to the cost of providing such excess utilities and services.

19.5 Common Area Water . Landlord shall provide water in the Common Areas for, to the extent applicable, lavatory and landscaping purposes only, which water shall be from the local municipal or similar source; provided, however, that if Landlord reasonably determines that Tenant requires, uses or consumes water provided to the Common Areas for any purpose not in common with other tenants or occupants other than ordinary lavatory purposes, Landlord may install a water meter (" Tenant Water Meter ") and thereby measure Tenant's water consumption for all purposes. Upon such determination by Landlord, Tenant shall pay Landlord for the costs of any Tenant Water Meter and the installation and maintenance thereof during the Term. If Landlord installs a Tenant Water Meter, Tenant shall pay for water consumed, as shown on such meter, as and when bills are rendered. If Tenant fails to timely make such payments, Landlord may pay such charges and collect the same from Tenant. Any such costs or expenses incurred or payments made by Landlord for any of the reasons or purposes stated in this Section shall be deemed to be Additional Rent payable by Tenant and collectible by Landlord as such.

19.6 Energy Tracking . Within ten (10) business days following Landlord's written request therefor, Tenant shall deliver to Landlord copies of any invoices for utility services provided to the Premises and related information reasonably requested by Landlord in connection with the requirements of California Public Resources Code Section 25402.10, the corresponding regulations adopted by the California Energy Commission and provided in California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Sections 1680-1684, and any supplemental and/or successor statute or regulations concerning the reporting of energy usage and efficiency relative to commercial buildings. Tenant acknowledges that any utility information for the Premises, the Building and the Project may be shared with third parties, including Landlord's consultants and Governmental Authorities. In the event that Tenant fails to comply with this Section, Tenant hereby authorizes Landlord to collect utility usage

information directly from the applicable utility providers. In addition to the foregoing, Tenant shall comply with all applicable Laws related to the disclosure and tracking of energy consumption at the Premises. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

19.7 Reservation of Rights . Landlord reserves the right to stop service of the plumbing, ventilation, air conditioning and utility systems, when Landlord reasonably deems necessary, due to accident, emergency or the need to make repairs, alterations or improvements, until such repairs, alterations or improvements shall have been completed. Landlord shall provide reasonable advance written notice to Tenant prior to any such stoppage (except in the event of an emergency), shall use commercially reasonable diligence to coordinate any such stoppage with Tenant (except in the event of an emergency) so as to minimize interference with Tenant's business at the Premises, and shall use commercially reasonable diligence to resume any stopped service as soon as reasonably practicable. Notwithstanding the foregoing, Landlord shall have no responsibility or liability for failure to supply plumbing, ventilation, air conditioning or utility service when prevented from doing so by Force Majeure (as defined in Section 36.8 below) or, to the extent permitted by applicable Law, Landlord's negligence. Without limiting the foregoing, it is expressly understood and agreed that any covenants on Landlord's part to furnish any service pursuant to any of the terms, covenants, conditions, provisions or agreements of this Lease, or to perform any act or thing for the benefit of Tenant, shall not be deemed breached if Landlord is unable to furnish or perform the same by virtue of Force Majeure or, to the extent permitted by applicable Law, Landlord's negligence.

ARTICLE 20

INDEMNIFICATION AND EXCULPATION OF LANDLORD

Tenant shall indemnify, defend and hold harmless the Landlord Indemnified Parties (as defined in Section 22.1.2 below) from and against any and all claims, demands, penalties, fines, liabilities, actions (including, without limitation, informal proceedings), settlements, judgments, damages, losses, costs and expenses (including reasonable attorneys' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise, incurred or suffered by or asserted against such Landlord Indemnified Party (collectively, " Claims ") arising from or in connection with, directly or indirectly, (a) any cause whatsoever in the Premises (including, but not limited to, Claims resulting in whole or in part from the negligence of the Landlord Indemnified Party), except to the extent directly caused by the gross negligence or intentional misconduct of such Landlord Indemnified Party, (b) the presence at or use or occupancy of the Premises or Project by a Tenant Party, except to the extent directly caused by the gross negligence or intentional misconduct of such Landlord Indemnified Party, (c) any act, neglect, fault or omission on the part of any Tenant Party, except to the extent directly caused by the gross negligence or intentional misconduct of such Landlord Indemnified Party, or (d) a breach or default by Tenant in the performance of any of its obligations hereunder, except to the extent directly caused by the gross negligence or intentional misconduct of such Landlord Indemnified Party. Payment shall not be a condition precedent to enforcement of the foregoing indemnity. In case any action or proceeding shall be brought against any Landlord Indemnified Party by reason of any such Claim, at such Landlord Indemnified Party's option, upon Notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably acceptable to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property (including, without limitation, any damage to personal property or scientific research, including loss of records kept by Tenant within the Premises (in each case, regardless of whether such damage is foreseeable)) or injury to Tenant or any other Tenant Parties in, upon or about the Premises, the Building, the Parking Area or the Project from any cause whatsoever and hereby waives all Claims (including consequential damages and claims for injury to Tenant's business or loss of income arising out of any loss of use of the Premises, the Building, the Parking Area or the Project or any equipment or facilities therein, or relating to any such damage or destruction of personal property as described in this Section) in respect thereof against each Landlord Indemnified Party, except to the extent caused by or resulting from: (i) any Landlord Default (defined below), (ii) the grossly negligent acts of such Landlord Indemnified Party, or (iii) the willful misconduct of such Landlord Indemnified Party. Landlord shall not be liable for any damages arising from any act, omission or neglect of any other tenant in the Building or the Project, or of any other third party. Tenant acknowledges that security devices and services, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts. Landlord shall not be liable for injuries or losses caused by criminal acts of third parties, except to the extent caused by Landlord's gross negligence or willful misconduct, and Tenant assumes the risk that any security device or service may malfunction or otherwise be circumvented by a criminal. If Tenant desires protection against such criminal acts, then Tenant may, at Tenant's sole cost and expense, obtain appropriate insurance coverage.

Without limitation on other obligations of Tenant that survive the expiration of the Term, the clauses of this Article 20 shall survive the expiration or earlier termination of this Lease until all Claims against the Landlord Indemnified Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

ARTICLE 21

DAMAGE TO TENANT'S PROPERTY

Notwithstanding the provisions of Article 20 or anything to the contrary in this Lease, no Landlord Indemnified Party shall be liable for: (a) loss or damage to any property by theft or any other cause whatsoever, (b) any injury or damage to persons resulting from fire, storms, earthquakes, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances or plumbing work therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever, except (with respect to both (a) and (b) above) to the extent caused by or resulting from: (i) the grossly negligent acts of such Landlord Indemnified Party, (ii) the willful misconduct of such Landlord Indemnified Party, or (iii) any latent defect in the Premises, the Building or any other portion of the Project that is not promptly remedied by Landlord following Landlord's receipt of notice thereof. Tenant shall immediately give Notice to Landlord in case of the occurrence of any fire or accidents in or about the Premises, the Building or any other portion of the Project, or the discovery of any defects therein (including, without limitation, any latent defect in the Premises) or in any fixtures or equipment that are the property of Landlord, Tenant or any other tenant or occupant of premises in the Project, upon Tenant obtaining knowledge thereof.

Without limiting the foregoing, Tenant acknowledges that safety and access control devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or access control device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant is advised that it may obtain insurance coverage to the extent Tenant desires additional protection against such criminal acts and other losses, as further described in Article 22 . Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

ARTICLE 22

INSURANCE

22.1 Tenant's Insurance . Tenant shall, during the Term hereof (and during any period that Tenant may enter, occupy and/or use the Premises prior to the Commencement Date and any holdover period), at its sole cost and expense, keep in full force and effect the following insurance:

22.1.1. Property insurance insuring against any perils included within the classification "All Risk," including fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicle, smoke damage, vandalism, malicious mischief and sprinkler leakage (and earthquake sprinkler leakage). Such insurance shall insure all property owned by Tenant or any other Tenant Party, for which Tenant or any other Tenant Party is legally liable or that was installed at the expense of Tenant or any other Tenant Party, and which is located in the Building, including, without limitation, furniture, furnishings, installations, fixtures and equipment, any other personal property, and in addition, all improvements and betterments to the Premises, including all Leasehold Improvements, in an amount not less than one hundred percent (100%) of the full replacement cost thereof. For the purposes of this Section 22.1.1 , the Premises shall consist of the floor area shown in the Outline of Premises, consisting of the cubic space spanning from the floor slab to the bottom surface of the floor slab of the floor immediately above the Premises (" Upper Slab "), without any offsets or deductions that are included for the Permitted Use of Tenant. Such cubic space shall include the plenum space which is bounded by the lower surface of the Upper Slab and the suspended ceiling of the Premises. In the event that there shall be a dispute as to the amount that comprises full replacement cost, the reasonable decision of Landlord or any mortgagees of Landlord shall be conclusive. Such policy shall name Landlord, any mortgagees of Landlord disclosed to Tenant in writing and any other additional parties reasonably designated by Landlord as loss payees and disclosed to Tenant in writing, as their respective interests may appear.

22.1.2. Commercial General Liability Insurance insuring Tenant on the current ISO CG 00 01 occurrence form or any equivalent reasonably acceptable to Landlord against any liability arising out of the lease, use, occupancy or maintenance of the Premises, the Building or the Project, or any portion of the foregoing. Such insurance shall be in the following minimum limits: $ 2 ,000,000 per occurrence and $2,000,000 in the aggregate and shall cover injury (including mental anguish) to or death of one or more persons and damage to tangible property (including loss of use) including blanket contractual liability, broad form property damage (including coverage for explosion and collapse), $1,000,000 personal & advertising injury, and $2,000,000 Products Completed Operations (provided such Products Completed Operations coverage may alternatively, at Tenant's option, be included in a separate insurance policy in satisfaction of this requirement) . The policy shall not include any exclusions or limitations other than those incorporated in the standard form. The policy shall insure the hazards of the Premises and Tenant's operations thereon, Tenant's independent contractors and Tenant's contractual liability (including, without limitation, the indemnity contained in Article 20 hereof) and shall: (i) name Landlord (6262 Lusk Investors LLC); B/L Lusk LLC ; the Property Manager; any additional entity Landlord may reasonably designate in writing from time to time; and their respective partners, parents, affiliates, divisions and subsidiaries, and each of their respective directors, officers, principals, partners, shareholders, members, managing members, agents, employees, successors and assigns (together with Landlord, collectively, " Landlord Indemnified Parties ") as additional insureds; and (ii) include coverage for cross liability claims between Named Insureds (i.e., "Named Insured vs. Named Insured" Cross Liability Coverage Endorsement if required for coverage and no exclusion for cross liability claims between Named Insureds). Such insurance , excluding Products Completed Operations insurance, shall indicate that defense costs shall be outside of the policy limits, and shall not contain any exclusions or restrictions applicable to operations of the type contemplated by this Lease. In addition to any insurance required of Tenant, Tenant shall secure, pay for and maintain or cause Tenant's contractors and sub-contractors to secure, pay for and maintain insurance during any construction or work to the Premises performed by or on behalf of Tenant at a minimum equal to the limits of liability required by Tenant. Tenant's products and completed operations insurance shall be maintained for a minimum period equal to the greater of (i) the period under which a claim can be asserted under any applicable statutes of limitations and/or repose or (ii) three (3) years after Substantial Completion of the Tenant Improvements. Tenant's contractual liability insurance shall include coverage sufficient to meet the indemnity obligations included herein.

22.1.3. Worker's Compensation Insurance in compliance with statutory requirements of the state(s) in which the employee resides, is hired and in which this Lease takes place, which insurance shall apply to all persons employed by Tenant, and Employer's Liability insurance in amounts not less than $1,000,000 per accident, $1,000,000 per disease, and $1,000,000 disease-policy limit.

22.1.4. Business interruption insurance and extra expense coverage on ISO coverage form CP 00 30 or equivalent reasonably acceptable to Landlord, which shall cover Tenant's monetary obligations under this Lease and any direct or indirect loss of earnings attributable to perils insured against in Section 22.1.1 above for a period of at least twelve (12) months. If Tenant fails to obtain business interruption insurance, it is understood and agreed upon that Tenant is fully responsible for its own business interruption exposure whether insured or not.

22.1.5. Comprehensive Automobile Liability Insurance including coverage for all owned, leased, hired and non-owned vehicles with a minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage liability.

22.1.6. Umbrella/Excess Liability Insurance policy with a per occurrence and annual aggregate limit of $5,000,000. The limits of liability required in Section 22.1.2 above for Commercial General Liability can be provided in a combination of a Commercial General Liability policy and an Umbrella Liability policy. Coverage shall be in excess of Commercial General Liability, Auto Liability and Employers' Liability insurance with such coverage being on a follow form basis, concurrent to and not more restrictive than underlying insurance. Tenant shall, by specific endorsement to its Umbrella/Excess Liability policy, cause the coverage afforded to the Landlord Indemnified Parties thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Landlord Indemnified Parties as set forth in this Lease and not concurrent with or excess to any other valid and collectible insurance available to the Landlord Indemnified Parties whether provided on a primary or excess basis. It is the specific intent of the parties that Tenant procure the excess carriers' agreement to waive and/or forego any viable "horizontal exhaustion" rights it might have in regard to any insurance any Landlord Indemnified Party might carry for its own benefit or on behalf of any other Landlord Indemnified Party.

22.1.7. If Tenant sells alcoholic beverages, Liquor Liability Insurance with limits of not less than $5,000,000 per occurrence.

22.1.8. Pollution Legal Liability insurance if Tenant stores, handles, generates or treats Hazardous Materials, as determined solely by Landlord, on or about the Premises. Such coverage shall include bodily injury, sickness, disease, death or mental anguish or shock sustained by any person; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages. Coverage shall apply to both sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the Commencement Date (or such earlier date that Tenant has access to the Premises), and coverage is continuously maintained during all periods in which Tenant occupies the Premises. Coverage shall be maintained with limits of not less than $1,000,000 per incident with a $2,000,000 policy aggregate.

22.1.9. Any other form or forms of insurance as Tenant or Landlord or any mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself.

22.1.10. Tenant may place all or any of the foregoing insurance coverages under blanket insurance policies carried by Tenant provided that no other loss which may also be insured by such blanket insurance shall affect the insurance coverages required hereby and so long as such policy complies with the amount of coverage required hereunder and otherwise provides the same protection as would a separate policy insuring only Tenant's insurance obligations in compliance with the provisions of Section 22.1 hereof. In addition, Tenant shall deliver to Landlord a certificate specifically stating that such coverages apply to Landlord, the Premises, the Building and the Project.

22.1.11. If Tenant shall hire or bring a vendor or contractor onto the Premises to perform any alterations, work or improvements, Tenant agrees to have a written agreement with such vendor or contractor whereby such vendor or contractor will be required to carry the same insurance coverages for Commercial General Liability, Auto and Worker's Compensation, Employer's Liability and Pollution Legal Liability insurance as required of Tenant herein. Tenant shall also require that such vendor's or contractor's insurance meet the same additional terms as required of Tenant herein with regards to adding the Landlord Indemnified Parties and all mortgagees as additional insureds, maintaining primary and non-contributory coverage, waiving all rights of recovery and subrogation, and making certificates of insurance available as evidence of all policies during the term of their work and in advance of all applicable renewals. Tenant shall not allow any vendors or contractors to begin work prior to obtaining certificates evidencing all insurance requirements contained herein.

22.2 Standard of Insurance . All policies shall be written in a form satisfactory to Landlord, and the Commercial General Liability, Comprehensive Automobile Liability, Umbrella/Excess Liability, Liquor Liability (if applicable) and Pollution Legal Liability policies required under Section 22.1 shall name all Landlord Indemnified Parties as additional insureds on a primary and non-contributory basis. In addition, if Tenant places any such required coverages under a blanket insurance policy as set forth in Section 22.1.10 , the blanket policy shall name all Landlord Indemnified Parties as additional insureds on a primary and non-contributory basis. All insurance policies required under Section 22.1 shall be issued by companies authorized to do business in the State of California with an A.M. Best's Rating of at least A-/VIII. No deductibles or Self-Insured Retention (" SIR ") of Tenant shall exceed $25,000 without Landlord's prior written approval. All deductibles and SIR are the responsibility of Tenant and must be shown on the certificate of insurance. On or before the date which is ten (10) days after the execution of this Lease, and prior to or on the renewal of such policies thereafter, Tenant shall deliver to Landlord copies of policies or certificates evidencing the existence of the amounts and forms of coverage satisfactory to Landlord. No such policy shall be cancelable or reducible in coverage except after thirty (30) days prior Notice to Landlord. Any insurance limits required by this Lease are minimum limits only and not intended to restrict the liability imposed on any Tenant for liability under this Lease. Tenant shall, prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof, or, prior to Tenant's furnishing such renewals or "binders" to Landlord, Landlord may

order such insurance and charge the cost thereof to Tenant as Additional Rent. If Landlord obtains any insurance that is the responsibility of Tenant under this Article 22 , Landlord shall deliver to Tenant a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Tenant shall remit said amount to Landlord within ten (10) business days.

22.3 Landlord Insurance .

22.3.1. During the Term of this Lease, Landlord shall insure the Project, the Building and the Parking Areas (to the extent Landlord is the owner thereof) (excluding any property which Tenant is obligated to insure under Sections 22.1 and 22.2 hereof) against damage with All-Risk insurance (which may, but shall not be required to, insure against earthquake damage) and public liability insurance, for the full replacement value of the thereof (with respect to All-Risk insurance) and otherwise in such amounts and with such deductibles as Landlord considers appropriate. Landlord may, but shall not be obligated to, obtain and carry any other form or forms of insurance as Landlord or Landlord's mortgagees may determine advisable. Notwithstanding any contribution by Tenant to the cost of insurance premiums, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any insurance policies carried by Landlord.

22.3.2. If any of Landlord's insurance policies shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced in any way because of Tenant's specific use of the Premises or any part thereof by Tenant or any assignee or subtenant of Tenant or by anyone Tenant permits on the Premises and, if Tenant fails to remedy the condition giving rise to such cancellation, threatened cancellation, reduction of coverage, threatened reduction of coverage, increase in premiums, or threatened increase in premiums, within forty-eight (48) hours after Notice thereof, Landlord may, at its option, but without any obligation so to do, enter upon the Premises and attempt to remedy such condition, and Tenant shall promptly pay the cost thereof to Landlord as Additional Rent.

22.4 Subrogation Waivers .

22.4.1. **Intentionally Omitted** .

22.4.2. **Subrogation Waiver** . Landlord and Tenant waive all rights against each other for damages caused by fire or other causes of loss occurring on and after the date on which this Lease is executed to the extent such damages are covered (or are required to be covered) by any insurance required under this Article 22 (including business income and loss of rent insurance) or otherwise carried by such party in relation to the Premises, the Building or the Project, regardless of whether such insurance is specifically required under this Lease. Tenant's waiver in this Section 22.4.2 also extends to the Landlord Indemnified Parties. Each party shall obtain an endorsement pursuant to which its insurers waive their subrogation rights against the parties specified in this Section 22.4.2 . If a property insurance policy implicated by the waiver in this Section 22.4.2 does not allow the insured to waive rights of recovery against others prior to a loss, the insured shall cause the policy to be endorsed to provide for such waiver. The waivers in this Section 22.4.2 will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, did not pay the insurance premium directly or indirectly, or did not have an insurable interest in the property damaged. To the extent that either party self-insures for its insurance obligations under this Lease (e.g., maintains a deductible amount), such party shall be treated as an independent insurer with full waiver of subrogation.

22.5 Exclusions . Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, electrical or electronic emanations or disturbance, water, rain or leaks from any part of the Building or from the pipes, or caused by dampness, vandalism, malicious mischief or by any other cause of whatever nature, unless caused by or due to the gross negligence or willful misconduct of Landlord, its agents, servants or employees, and then only after (i) reasonable prior notice to Landlord of the condition claimed to constitute gross negligence and (ii) the expiration of a reasonable time after such notice has been received by Landlord without Landlord having taken all reasonable and practicable means to cure or correct such condition; and pending such cure or correction by Landlord, Tenant shall take all reasonably prudent temporary measures and safeguards to prevent any injury, loss or damage to persons or property. In no event shall Landlord be liable for any loss, the risk of which is covered by Tenant's insurance or is required to be so covered by this Lease; nor shall Landlord or its agents be liable for any such damage caused by other persons in the Building or caused by

operations in construction of any private, public, or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises or in the Building except as expressly provided otherwise in this Lease .

ARTICLE 23

DAMAGE OR DESTRUCTION

23.1 Damages . If the Building and/or the Premises are damaged by fire or other perils covered by Landlord's insurance, Landlord shall:

23.1.1. In the event of one hundred percent (100%) destruction of the Premises (" Total Destruction "), at Landlord's option, as soon as reasonably possible thereafter, commence repair, reconstruction and restoration of the Building and/or the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect (subject to Section 23.3 below); provided, however, that if within ninety (90) days after the occurrence of such damage, Landlord shall by Notice to Tenant elect not to so repair, reconstruct or restore the Building and/or the Premises, this Lease shall terminate as of the date of such Total Destruction, provided such election is also made with respect to all similarly situated tenants within the Project.

23.1.2. In the event of a partial destruction of the Building and/or the Premises and if the damage thereto is such that the Building and/or the Premises is capable of being repaired, reconstructed or restored within a period of ninety (90) days from the date of Landlord's discovery of such damage, and if Landlord will receive insurance proceeds sufficient to cover the total cost of such repairs, reconstruction or restoration, Landlord shall commence and proceed diligently with the work of repairs, reconstruction and restoration of the Building and/or the Premises or both, as the case may be, and this Lease shall continue in full force and effect (subject to Section 23.3 below). If such work of repair, reconstruction and restoration shall require a period longer than ninety (90) days or exceeds twenty-five percent (25%) of the full replacement cost of the Building and/or the Premises, or both, as the case may be, or if insurance proceeds will not be sufficient to cover the cost of such repairs, reconstruction and restoration, then Landlord either may elect to so repair, reconstruct or restore and this Lease shall continue in full force and effect (subject to Section 23.3 below) or may elect not to repair, reconstruct or restore and this Lease shall then terminate as of the date of such partial destruction. Under any of the conditions of this Section 23.1.2 , Landlord shall give Notice to Tenant of its intention regarding repairs, including Landlord's good faith estimate of the time required to substantially complete such repairs (" Landlord's Repair Notice "), within said ninety (90) day period. If the partial destruction causes a material portion of the Premises to be unusable for the Permitted Use and Landlord's Repair Notice estimates that the repairs will take more than one hundred eighty (180) days after the occurrence thereof to substantially complete, and if Landlord does not elect to terminate this Lease, then Tenant shall have the right to terminate this Lease by Notice to Landlord delivered within ten (10) business days following delivery of Landlord's Repair Notice, which termination shall be effective no earlier than thirty (30) days after delivery of such Notice to Landlord. If damage is due to any cause other than fire or other peril covered by extended coverage insurance, Landlord may elect to terminate this Lease.

23.1.3. In any case where Landlord elects to repair, restore or reconstruct the Premises following the occurrence of any damage to which this Article 23 applies, then Tenant shall assign to Landlord the proceeds of its property insurance attributable to the Leasehold Improvements. If the cost of restoring the Leasehold Improvements exceeds the amount of the proceeds of Tenant's property insurance that are received by Landlord, Tenant shall promptly pay the amount of such deficiency to Landlord upon demand.

23.2 Termination of Lease . Upon any termination of this Lease under any of the provisions of this Article 23 , the parties shall be released without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have therefore accrued and/or are then unpaid or items which expressly survive the expiration or sooner termination of this Lease.

23.3 Rent Abatement . In the event of any casualty, the Rent payable under this Lease shall be abated proportionately with the degree to which Tenant's Permitted Use of the Premises is impaired either during the period of such repair, reconstruction or restoration or until termination of the Lease pursuant to this Article 23 , but only to the extent that Landlord is compensated for such loss by the insurance carried or required to be carried pursuant to Section 22.1.4 above. Notwithstanding the foregoing, there shall be no abatement of Rent if such damage is caused

primarily by the negligence (with respect to the Premises), gross negligence (with respect to areas of the Project located outside of the Premises) or intentional wrongdoing of Tenant or any Tenant Party. Tenant shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Premises and/or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration. If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to repair or restor e only those portions of the Building and the Premises which were originally provided at Landlord's expense, and the repair and restoration of items not provided at Landlord's expense shall be the obligation of Tenant.

23.4 Damage Near End of Term . Notwithstanding anything to the contrary contained in this Article 23 , if material damage to the Premises occurs during the last twelve (12) months of the Term, either party may elect, no later than ninety (90) days after the date of such damage, to terminate this Lease by written notice to the other effective as of the date specified in the notice, which date shall not be less than ten (10) business days nor more than sixty (60) days after the date such notice is given.

23.5 Waiver of Statute . In the event of damage to the Premises and/or the Building, Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Article 23 . Tenant hereby waives the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4, and any other statute or court decision relating to the abatement or termination of a lease upon destruction of the Premises and the provisions of this Article 23 shall govern in case of such destruction.

ARTICLE 24

EMINENT DOMAIN

24.1 Permanent Taking . If all of the Premises, or such part thereof as shall substantially interfere with Tenant's Permitted Use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking (a " Taking "), either party shall have the right to terminate this Lease by Notice to the other effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such Taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant. If the amount of property or the type of estate taken shall not substantially interfere with the conduct of Tenant's business, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, Landlord shall restore the Premises to substantially their same condition prior to such partial Taking (including partitioning such space from the remainder of the Premises), and Basic Rent shall be reduced, effective as of the date the condemning authority takes possession, in the same proportion which the Rentable Square Feet of the portion of the Premises so taken bears to the Rentable Square Feet of the entire Premises before the Taking. Nothing contained in this Section 24.1 shall be deemed to give Landlord any interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant or for relocation costs and expenses and bonus value.

24.2 Temporary Taking . Notwithstanding anything to the contrary in Section 24.1 above, in the event of Taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the Taking which is within the Term, provided that if such Taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall then pay to Landlord a sum equal to the reasonable cost of performing Tenant's obligations under Section 15. 2 above and Article 31 below with respect to surrender of the Premises and, upon such payment, shall be excused from such obligations. For purpose of this Article 24 , a "temporary" Taking shall be defined as a Taking for a period of two hundred seventy (270) days or less and a "permanent" Taking shall be defined as a Taking for a period of more than two hundred seventy (270) days.

24.3 Waiver of Statute . Tenant (for itself and all others claiming through Tenant) hereby irrevocably waives and releases its rights under Section 1265.130 of the California Code of Civil Procedure.

ARTICLE 25

DEFAULTS AND REMEDIES

25.1 Tenant Default . The occurrence of any one or more of the following events, upon the expiration of any applicable time period, shall constitute a default hereunder by Tenant (" Tenant Default "):

25.1.1. Abandonment of the Premises by Tenant. Notwithstanding the provisions of California Civil Code Section 1951.3, " Abandonment " is defined to include, but not limited to, any absence by Tenant from the Premises for thirty (30) days or longer while in default pursuant to this Section 25.1 ;

25.1.2. The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) business days after Landlord's delivery of Notice thereof;

25.1.3. The failure by Tenant to obtain and keep in force at all times any insurance Tenant is required to obtain and keep in force under Article 22 where such failure is not cured within two (2) business days after Landlord's delivery of Notice of such failure;

25.1.4. Hypothecation, assignment or other transfer of this Lease or subletting of the Premises, or attempts of such actions in violation of Article 27 of this Lease;

25.1.5. The failure by Tenant to deliver any certificate, instrument or statement that is required to be delivered by Tenant under Article 28, Article 29 or Section 36.16 within the time frames required in Article 28, Article 29 or Section 36.16 , as applicable, which Tenant fails to cure within five (5) business days after Landlord's delivery of Notice thereof;

25.1.6. The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 25.1.1 – 25.1.5 above or Section 25.1.7 below, where such failure shall continue for a period of ten (10) business days after Landlord's delivery of Notice thereof; provided that if the nature of any such failure is such that more than ten (10) business days are reasonably required for its cure, then no Tenant Default shall be deemed to occur if (and for so long as) Tenant commences the cure of such failure within said ten (10) business day period and thereafter diligently prosecutes such cure to completion within one hundred twenty (120) days after Landlord's delivery of Notice thereof; or

25.1.7. The (a) making by Tenant of any general assignment for the benefit of creditors; (b) filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any Law relating to bankruptcy; (c) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease; (d) attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease; or (f) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts, or any class thereof; provided that no Tenant Default will be deemed to occur under this Section 25.1.7 if (i) any petition described in clause (a) above that filed against (rather than by) Tenant, is dismissed within sixty (60) days) after filing, (ii) in the event any trustee or receiver shall take possession of substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease, possession of the same is restored to Tenant within sixty (60) days or (iii) any attachment, execution or other judicial seizure described in clause (d) above is discharged within sixty (60) days.

Any Notice from Landlord required hereby shall be in lieu of, and not in addition to, any Notice required under California Code of Civil Procedure Section 1161 regarding unlawful detainer actions or any similar successor statute. Accordingly, Tenant (for itself and all others claiming through Tenant) hereby expressly and irrevocably waives the notice requirements of California Code of Civil Procedure Section 1162 that would otherwise govern notices required under Section 1161, and agrees that any notice provided pursuant to this Section 25.1 shall replace and satisfy any such requirements of Section 1162.

25.2 Landlord Remedies . In the event of any such Tenant Default, in addition to any other remedies available to Landlord at law or in equity, including, without limitation, the remedies available under California Civil Code Section 1951.2 and any successor statute, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

25.2.1. The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

25.2.2. the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

25.2.3. the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

25.2.4. any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees and any other reasonable costs; and

25.2.5. at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Law.

As used in Sections 25.2.1 and 25.2.2 above, the "worth at the time of award" is computed by allowing interest at the Default Rate. As used in Section 25.2.3 above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco (" Discount Rate ") at the time of award plus one percent (1%). If the format or components of the Discount Rate are materially changed, or if the Discount Rate ceases to exist, Landlord shall substitute a discount rate which is maintained by the Federal Reserve Bank of San Francisco or similar financial institution and which is most nearly equivalent to the Discount Rate.

25.3 Additional Remedies . If any such Tenant Default occurs, Landlord may utilize the remedy described in California Civil Code Section 1951.4 (which provides landlord may continue the lease in effect after a tenant's breach and abandonment and recover Rent as it becomes due, if tenant has the right to sublet or assign subject to reasonable limitations). Accordingly, in the event of any Tenant Default and abandonment of the Premises by Tenant, if Landlord does not elect to terminate this Lease on account of such Tenant Default, then Landlord may from time-to-time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due. In the event of the Abandonment of the Premises by Tenant or in the event that Landlord utilizes the remedy described in this Section 25.3 above or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by Law, then if Landlord does not elect to terminate this Lease as provided above, Landlord may from time to time, without terminating this Lease, either recover all Rent as it becomes due or seek to relet the Premises or any part thereof for the Term of this Lease on terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises.

If Landlord shall elect to relet the Premises, such reletting shall not relieve Tenant of any obligation hereunder, except that the rents received by Landlord from such reletting shall be applied as follows: (a) first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (b) second, to the payment of any cost of such reletting; (c) third, to the payment of the cost of any alterations and repairs to the Premises; (d) fourth, to the payment of Rent due and unpaid hereunder and (e) the residue, if any, shall be held by Landlord and applied to payment of future Rent as the same may become due and payable hereunder. Should that portion of such rents received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord

immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses, including reasonable attorneys' fees, incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rents received from such reletting. During the continuance of a Tenant Default, Landlord shall have the right to market the Premises to potential new tenants and may show the Premises to such potential new tenants during normal business hours.

25.4 Notice of Default . Tenant hereby acknowledges that default by Tenant hereunder, and Landlord's election to prepare and serve a Notice of any such default hereunder (a " Notice of Default "), will cause Landlord to incur costs not contemplated by this Lease, and costs in addition to any costs which may be reimbursed to Landlord by any provision which may be contained herein relative to the payment of interest or late charges on amounts due hereunder. Accordingly, Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of a Notice of Default and consultations in connection therewith, with respect to which Landlord and Tenant agree that Seven Hundred Fifty Dollars ($750.00) is a reasonable minimum sum per such occurrence, whether or not legal action is subsequently commenced in connection with any such default. It is further hereby specifically agreed by and between Landlord and Tenant that any and all such fees and costs shall be deemed Additional Rent hereunder, and may, at the option of Landlord, be included in any Notice of Default hereunder.

25.5 Landlord's Right to Cure . If Tenant should fail to make any payment or perform any of its other obligations hereunder, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Tenant (and enter the Premises for such purpose): (a) immediately and without notice in the case: (i) of emergency, (ii) of a default by Tenant of its obligations under Section 8.3 , Section 15.2 and/or Article 31 , (iii) where such default unreasonably interferes with any other tenant in the Building or Project, (iv) a failure to timely satisfy or otherwise discharge any lien, or (v) where such default will result in the violation of Law or the cancellation of any insurance policy maintained by Landlord and (b) in any other case if such default continues beyond the applicable notice and cure period specified in Section 25.1 above, and thereupon Tenant shall be obligated to, and hereby agrees to pay Landlord, upon demand, all costs, expenses, and disbursements incurred by Landlord in taking such remedial action, together with an amount equal to five percent (5%) thereof for Landlord's overhead and administrative expenses, and the sum of such costs, together with interest thereon at the rate described in Section 5.3 from the date of Landlord's payment thereof, shall be deemed Additional Rent.

25.6 Waiver of Redemption . Tenant (for itself and all others claiming through Tenant) hereby irrevocably waives and releases its rights to redemption and reinstatement under any present or future case law or statutory provision (including, without limitation, Sections 473, 1174 and 1179 of the California Code of Civil Procedure and Section 3275 of the California Civil Code) in the event that Tenant is dispossessed from the Premises for any reason.

25.7 Landlord's Default . Landlord's failure to perform or observe any of its obligations under this Lease shall constitute a default by Landlord under this Lease (a " Landlord Default ") only if Landlord, or the Holder (defined below) of any Security Instrument (defined below) covering the Premises, fails to perform obligations required of Landlord within thirty (30) days after Notice by Tenant to Landlord (and to each Holder disclosed to Tenant in writing pursuant to Section 36.5 below), specifying wherein Landlord has failed to perform such obligations in reasonable detail; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then no Landlord Default shall occur if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion (or if any Holder of any Security Instrument commences and prosecutes the cure pursuant to Section 36.5 below). In no event shall Tenant be entitled to terminate this Lease by reason of any Landlord Default, and Tenant's remedies shall be limited to an action at law or equity; provided that, and notwithstanding any provision of this Lease to the contrary, in no event shall Landlord be liable for any consequential damages or lost profits. Without limiting the foregoing, in recognition that Landlord must receive timely payments of Rent and operate the Building and Project, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord and, except as expressly provided in Sections 23.3 , 24.1 and 25.8 , shall have no right to withhold, set-off, or abate Rent.

25.8 Abatement of Rent . In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of any of the following, to the extent within Landlord's reasonable control: (i) any

repair, maintenance or alteration performed by Landlord, or which Landlord failed to perform, after the Commencement Date and required by this Lease, which substantially interferes with Tenant's use of the Premises, (ii) Landlord's entry into the Premises under Article 18 (except in the event of an emergency), or (iii) any failure to provide services, utilities or access to the Premises which Landlord is required to provide under this Lease (each of the foregoing, an " Abatement Event "), then Tenant shall give Landlord written Notice of such Abatement Event, and if such Abatement Event continues for five (5) consecutive business days after Landlord's receipt of any such Notice (" Eligibility Period ") and Landlord does not diligently commence and pursue to completion the remedy of such Abatement Event, then, except to the extent covered by business interruption or similar insurance carried or required to be carried by Tenant hereunder, Basic Rent, Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Basic Rent, Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Such right to abate Basic Rent, Tenant's Percentage of Operating Expenses and Tenant's Percentage of Real Property Taxes shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event. Except as expressly provided in this Section 25.8 , nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder .

ARTICLE 26

NO WAIVER

All rights, options and remedies of Landlord and Tenant contained in this Lease shall be construed and held to be cumulative, and not one of them shall be exclusive of the other, and Landlord and Tenant shall each have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by Law, whether or not stated in this Lease. The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of Landlord or Tenant to insist upon the performance by the other party in strict accordance with said terms. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance by Landlord of a lesser sum than the Basic Rent and Additional Rent or other sum then due shall be deemed to be other than on account of the earliest installment of such Rent or other amount due, nor shall any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease. Without limiting the foregoing, Tenant (for itself and all others claiming through Tenant) acknowledges that this Article 26 imparts actual notice to Tenant, pursuant to California Code of Civil Procedure Section 1161.1(c), that Landlord's acceptance of partial payment of Rent shall not constitute a waiver of any rights available under this Lease or at law or equity, including, without limitation, the right to recover possession of the Premises.

ARTICLE 27

ASSIGNMENT AND SUBLETTING

27.1 Transfer . Tenant shall not voluntarily or by operation of law: (a) sublease all or any part of the Premises (a " Sublease "), (b) assign this Lease (an " Assignment "), or (c) enter into any other agreement or arrangement: (i) that permits a third party (other than Tenant's employees, officers, directors, agents, representatives, consultants, contractors, licensees and invitees) to enter, occupy or use any portion of the Premises or (ii) otherwise assigns, transfers, mortgages, pledges, hypothecates, encumbers or permits a lien to attach to Tenant's interest under this Lease or in the Premises (each of the foregoing (a), (b) and (c), a " Transfer "), without

first obtaining Landlord's prior written consent in accordance with this Article 27 . In addition, for purposes of this Lease a "Transfer" (which shall be subject to the provisions of this Article 27) shall also include: (a) a direct or indirect transfer, assignment, pledge, or hypothecation of a Controlling (defined below) interest in Tenant and/or (b) the dissolution of the entity that constitutes Tenant without its immediate reconstitution. " Control " or " Controlling " means possession of the direct or indirect power to direct or cause the direction of the management and policies of a person or entity. No consent to an assignment, encumbrance or sublease shall constitute a waiver of any provision of this Article 27 or consent to any future assignment, encumbrance or transfer. Any Transfer without Landlord's prior written consent shall be voidable at Landlord's election and shall constitute a Tenant Default.

27.2 Transfer Procedure . If Tenant desires to make any Transfer, then at least thirty (30) days prior to the date when Tenant desires the Transfer to be effective (" Transfer Date ") Tenant shall give Landlord a Notice (" Transfer Notice "), setting forth: (a) the name, address and business of the person or entity to which the Transfer is proposed (" Proposed Transferee "); (b) information (including references) concerning the character, ownership and financial condition of the Proposed Transferee; (c) the proposed Transfer Date (which shall not be later than 90 days following the Transfer Notice); (d) any ownership or commercial relationship between Tenant and the Proposed Transferee; and (e) the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord shall reasonably require. If Landlord reasonably requests additional detail (including, without limitation, financial statements of the proposed Transferee or a current estoppel certificate from Tenant), the Transfer Notice shall not be deemed to have been received until Landlord receives such additional detail, and Landlord may withhold consent to any proposed Transfer until such information is provided to it.

27.3 Recapture . Within thirty (30) days of Landlord's receipt of a Transfer Notice, and all information specified in Section 27.2 above, Landlord may, at its option, in its sole and absolute discretion, by Notice to Tenant, elect to: (a) in the case of a proposed Sublease, sublease the Premises or the portion thereof proposed to be sublet by Tenant at a rental rate per square foot equal to the lesser of the per square foot rental rate under this Lease or the proposed Sublease; (b) in the case of a proposed Assignment, take an assignment of this Lease upon the same terms as those offered to the proposed assignee; or (c) terminate this Lease in its entirety or as to the portion of the Premises subject to the proposed Transfer; provided, however, that following such election by Landlord, Tenant may rescind its Transfer Notice upon written Notice to Landlord within five (5) business days after such election, in which event this Lease shall continue in full force and effect as though Tenant had not delivered such Transfer Notice. If Landlord elects to proceed pursuant to clause (a) or (b) above, any payment by Landlord to Tenant pursuant to such clause shall not exceed the amount which Tenant would have received pursuant to Section 27.5.2 below if Landlord had elected to consent to the proposed Sublease or Assignment. If this Lease shall be terminated with respect to the entire Premises, the Term shall end on the Transfer Date as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures only a portion of the Premises, the Rent during the unexpired Term and Tenant's Percentage shall be adjusted proportionately based on the Rentable Square Feet remaining in the Premises after such recapture. Tenant shall, at Tenant's own cost and expense, discharge in full any commissions which may be due and owing as a result of any proposed assignment or subletting, whether or not the Premises (or portion thereof) are recaptured pursuant to this Section 27.3 and rented by Landlord to the proposed tenant or any other tenant.

27.4 Landlord's Consent; Consent Standards; No Release .

27.4.1. Unless Landlord elects to exercise any of its rights under Section 27.3 above, Landlord shall, by Notice to Tenant delivered within thirty (30) days after Landlord's receipt of the Transfer Notice, elect to: (a) consent to such proposed Transfer upon the terms and to the Proposed Transferee; or (b) refuse to give its consent to the proposed Transfer. Landlord shall not unreasonably withhold, condition or delay its consent to any Proposed Transfer; provided that, without limiting other situations in which it may be reasonable for Landlord to withhold its consent to any proposed Transfer, it shall be deemed reasonable for Landlord to withhold its consent to any proposed Transfer if Landlord determines in its sole but reasonable discretion that: (i) the Proposed Transferee does not have sufficient financial strength or stability to perform all obligations under this Lease, and to perform them without any higher risk of default than Tenant; (ii) the intended use of the Premises (or the applicable portion thereof) by the Proposed Transferee is inconsistent or incompatible with the Permitted Use; (iii) the intended use of the Premises (or the applicable portion thereof) by the Proposed Transferee will require Major Alterations; (iv) the intended use of the Premises (or the applicable portion thereof) by the Proposed Transferee will violate this Lease or any Laws governing the Premises or the Building or Project; (v) the Proposed Transferee has the power of eminent

domain, is a G overnmental Authority or an agency or subdivision of a foreign government; (vi) either the Proposed Transferee, or any person which directly or indirectly controls, is controlled by, or is under common control with the Proposed Transferee: (A) occupies space in the Project (if other space of comparable size is then available within the Project for such Proposed Transferee's use) or has negotiated with Landlord or any of its affiliates within the preceding one hundred eighty (180) days (or is currently negotiating with Landlord or any of its affiliates) to lease space in the Building or Project or (B) does not intend to occupy the Premises or the applicable portion thereof; (vii) at the time Tenant delivers the Transfer Notice, there exists an uncured Tenant Default; (viii) the proposed Transfer would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or would give an occupant of the Building or Project a right to cancel or modify its lease; (ix) any ground lessor or mortgagee whose consent to such Transfer is required fails to consent thereto; (x) the use of the Premises (or the applicable portion thereof), the Building or the Project by the Proposed Transferee would, in Landlord's judgment, significantly increase pedestrian traffic in and out of the Building and/or the Project, generate increased loitering in Common Areas, increase security risk, or require any alterations to the Building or the Project to comply with applicable Laws; (xi) the Proposed Transferee 's primary business is in direct competition with the primary business of another tenant in the Building ; (xii) the Proposed Transferee has been required by any prior landlord, lender or Governmental Authority to take material remedial action in connection with Hazardous Materials contaminating a property, which contamination resulted from Proposed Transferee's action or omission or use of the property in question and the Proposed Transferee's intended use of the Premises would involve the same or similar use that resulted in such contamination ; or (xiii) the Proposed Transferee is subject to a material enforcement order issued by any Governmental Authority in connection with the use, disposal or storage of Hazardous Materials and the Proposed Transferee's intended use of the Premises would involve the same or similar use that resulted in such material enforcement order .

27.4.2. Tenant further agrees that Landlord may condition its consent to any proposed Transfer upon satisfaction of any of the following conditions: (a) delivery to Landlord of a true copy of a fully executed sublease, assignment of lease or other instrument pursuant to which the applicable Transfer is made (" Transfer Instrument "); (b) delivery to Landlord of original executed copies (by Tenant and the Transferee (defined below)) of Landlord's commercially reasonable form of Consent to Sublease (in the case of a Sublease) or Assignment and Assumption of Lease and Consent (in the case of an Assignment) or other instrument under which Landlord grants consent to the applicable Transfer (" Consent Instrument ") and (c) receipt by Landlord of all sums and amounts to which Landlord is entitled under Section 27.5 below. Tenant acknowledges and agrees that any Consent Instrument may, without limitation: (i) in the case of a Sublease or Assignment, require the person or entity to which the Transfer is made (" Transferee "), from and after the effective date of such Transfer, to be bound by all of the terms and provisions of this Lease and to perform all of the obligations of Tenant hereunder applicable to the Premises, or the portion thereof that is the subject of the applicable Transfer; (ii) in the case of an Assignment, include waivers by Tenant of all applicable suretyship defenses, including, but not limited to, those contained in Sections 2787 to 2855, inclusive, of the California Civil Code; and (iii) in the case of a Sublease: (A) provide that such Sublease is subject and subordinate to this Lease to all Security Instruments encumbering the Building or the Project, (B) require the Transferee to, upon demand by Landlord following the occurrence of any Tenant Default, remit directly to Landlord, all monies payable from such Transferee to Tenant in connection with such Sublease and (C) provide that in the event of termination of this Lease for any reason, including without limitation a voluntary surrender by Tenant, or in the event of any reentry or repossession of the Premises by Landlord, Landlord may, at its option, either: (x) terminate the sublease or (y) take over all of the right, title and interest of Tenant, as sublessor, under such sublease, in which case such sublessee shall attorn to Landlord, but that nevertheless Landlord shall not: (1) be liable for any previous act or omission of Tenant under such sublease, (2) be subject to any defense or offset previously accrued in favor of the sublessee against Tenant, or (3) be bound by any previous modification of any sublease made without Landlord's written consent, or by any previous prepayment by sublessee of more than one month's rent.

27.4.3. If Landlord grants its consent to any proposed Transfer described in any Transfer Notice, Tenant may during the thirty (30) days thereafter consummate such Transfer with the Proposed Transferee upon the terms and conditions described in the applicable Transfer Notice; provided, however, that any material change in such terms shall be subject to Landlord's consent as provided in this Article 27 . No Assignment or Sublease or other Transfer (whether with or without Landlord's consent) shall relieve Tenant or any assignee or sublessee from any obligation under this Lease whether or not accrued as of the date of the Assignment or Sublease (and, to the extent such Tenant is deemed a surety of an assignee, Tenant hereby waives all applicable suretyship defenses, including, but not limited to, those contained in Sections 2787 to 2855, inclusive, of the California Civil Code.

27.5 Landlord's Costs; Transfer Premiums .

27.5.1. If Tenant requires Landlord's consent to a proposed Transfer under the provisions of this Article 27 , Tenant shall, upon demand, reimburse all of Landlord's reasonable out-of-pocket expenses, costs and attorneys' fees actually incurred in connection with processing such request for consent, whether or not Landlord grants consent to such proposed Transfer, not to exceed $2,500 per request.

27.5.2. If Landlord consents to a Transfer, Tenant shall pay to Landlord fifty percent (50%) of any rent or other consideration realized by Tenant pursuant to such Transfer in excess of (i) the Rent payable by Tenant under this Lease, (ii) any reasonable tenant improvement allowance or other economic concession (e.g., space planning allowance, moving expenses, free or reduced rent periods, etc.) actually incurred by Tenant in connection with such Transfer, (iii) any reasonable advertising costs and brokerage commissions actually incurred by Tenant in connection with such Transfer, and (iv) any reasonable legal fees actually incurred by Tenant in connection with such Transfer. Landlord shall have the right to audit the books, records and papers of Tenant relating to any Transfer, and if the amount of such Additional Rent shall be found understated, Tenant shall immediately pay such deficiency upon demand and, if understated by more than two percent (2%), Tenant shall also pay Landlord's reasonable costs of such audit.

27.6 Rights Not Transferable . All options to extend or renew the Term and/or to expand the Premises, if any, contained in this Lease or any addendum or amendment hereto or letter of agreement are personal to the Original Tenant, and may not be transferred in connection with any Transfer or exercised by any Transferee, except for a Permitted Transferee in connection with a Permitted Transfer. In addition, (a) all rights to any signage at the Project in any location outside of the Premises, if any, contained in this Lease or any addendum or amendment hereto or letter of agreement; (b) all rights to above standard (or discounted) parking at the Project, if any, contained in this Lease or any addendum or amendment hereto or letter of agreement; and (c) all rights to receive any above standard services or utilities, if any, contained in this Lease or any addendum or amendment hereto or letter of agreement, are personal to the Original Tenant, and may not be transferred in connection with any Transfer or exercised by any Transferee, except for a Permitted Transferee in connection with a Permitted Transfer or any other Transferee in connection with a Transfer approved in writing by Landlord.

27.7 Permitted Transfers . Notwithstanding anything to the contrary contained in this Article 27 , (a) any Transfer to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with Tenant), (b) any Transfer to an entity which acquires all or substantially all of the assets or interests (partnership, stock or other) of Tenant, or (c) any Transfer to an entity which is the resulting entity of a merger or consolidation of Tenant, shall not be deemed a Transfer requiring Landlord's consent under this Article 27 , provided that (i) the financial condition of such transferee entity is, in Landlord's reasonable judgment, the same or greater than that of the Original Tenant both as of the Effective Date of this Lease and as of the date of the proposed transfer; (ii) Tenant notifies Landlord of such transfer within thirty (30) days thereof and promptly thereafter supplies Landlord with any documents or information reasonably requested by Landlord regarding such transfer or such affiliate; and (iii) such transfer is not a subterfuge by Tenant to avoid its obligations under this Lease or otherwise effectuate any "release" by Tenant of such obligations. A transfer made in accordance with this Section 27.7 shall be referred to as a " Permitted Transfer " and the transferee shall be referred to as a " Permitted Transferee ." "Control," as used in this Section 27.7 , shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity. No assignment or sublease under this Section 27.7 shall relieve Tenant from any of its obligations under this Lease whether or not accrued as of the date of such assignment or sublease.

ARTICLE 28

SUBORDINATION

Without the necessity of any additional documents being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord, or any current or future mortgagee or holder of deed of trust with a lien on the Building or the Project or any ground lessor with respect to the Building or the Project (each, a " Holder "), this Lease shall be subject and subordinate at all times to: (a) all ground leases or underlying leases

which may now exist or hereafter be executed affecting the Building, the Project, or the land upon which the Building and the Project are situated, or both; and (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Building, the Project, the land upon which the Building and the Project are situated, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security (collectively, " Security Instruments "). With respect to any current or future Security Instrument, Landlord shall use commercially reasonable efforts to assist Tenant in obtaining a commercially reasonable non-disturbance agreement from the Holder thereof. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated such ground leases or any such liens to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Landlord, at the option of such successor-in-interest to Landlord. Tenant covenants and agrees to execute and deliver, within ten (10) business days after demand by Landlord therefor, any additional documents evidencing the priority or subordination of this Lease with respect to any such Security Instruments. Tenant hereby irrevocably appoints Landlord as its attorney-in-fact to execute, deliver and record any such document in the name and on behalf of Tenant.

ARTICLE 29

ESTOPPEL CERTIFICATES

29.1 Tenant Estoppel Certificate .

29.1.1. Within ten (10) business days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement, in a form substantially similar to the form of Exhibit "E" attached hereto, and incorporated herein by this reference (a " Tenant Estoppel Certificate ") certifying: (a) the Commencement Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) that to the best of Tenant's knowledge, there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other customary and commercially reasonable matters as are included in such statement by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Article 29 may be relied upon by any mortgagee, lessor, beneficiary, purchaser or prospective purchaser of the Building or the Project or any interest therein.

29.1.2. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant: (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) that there are no uncured defaults in Landlord's performance, (c) that not more than one (1) month's Rent has been paid in advance and (d) that the statements included in the Tenant Estoppel Certificate are true and correct, without exception. Additionally, any such failure to timely deliver a Tenant Estoppel Certificate shall constitute an immediate Tenant Default hereunder.

29.2 Landlord Estoppel Certificate . Within ten (10) business days following Tenant's written request to Landlord, to the extent reasonably required by an actual or prospective lender or an actual or prospective purchaser of all or substantially all of Tenant's assets, Landlord shall execute and deliver to Tenant a statement certifying (a) that this Lease (and any amendments thereto as of such date) is unmodified and in full force and effect, except as specified in such statement, and (b) that, to the best of Landlord's knowledge, there are no then existing defaults under this Lease by Tenant or Landlord, nor does there then exist any event or circumstance that with the passage of time or the giving of notice or both would constitute such a default, except as specified in such statement.

ARTICLE 30

INTENTIONALLY OMITTED

ARTICLE 31

SURRENDER OF PREMISES

Upon the expiration or earlier termination of the Term hereof, Tenant shall peaceably surrender the Premises and all Leasehold Improvements therein, excepting only any of the same that are required to be removed in accordance with Section 15.2 above, to Landlord broom-clean, in good order, repair and condition (reasonable wear and tear and damages from casualty or condemnation excepted), with all of Tenant's Personal Property removed and free of any Hazardous Materials, and shall otherwise comply with all of the requirements of Section 15.2 above and Section 41.1 below. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies. The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

ARTICLE 32

INTENTIONALLY OMITTED

ARTICLE 33

PARKING

Beginning on the Commencement Date, Tenant and Tenant's business visitors (" Tenant's Parking Invitees ") shall be entitled to use the number of parking spaces set forth in Section 1.8 during the Initial Term, which parking spaces shall be located in the surface parking area of the Project (" Parking Area "). There shall be no direct charge attributable to Tenant's use of the Parking Area, other than any taxes imposed by any governmental authority in connection with the renting of parking spaces by Tenant or the use of the Parking Area by Tenant. Tenant's continued right to use the Parking Area is conditioned upon Tenant abiding by the Parking Rules and Regulations set forth on Exhibit "G" as amended from time to time for the orderly operation and use of the Parking Area, including any sticker, parking pass or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with the Parking Rules and Regulations and Tenant not being in default under this Lease (beyond any applicable notice and cure periods). Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Parking Area at any time and Tenant acknowledges and agrees that Landlord may, from time to time, close-off or restrict access to the Parking Area for purposes of permitting or facilitating any such construction, alteration or improvements; provided, however, in connection with any such change, close-off or access restrictions, the same shall be without incurring any liability to Tenant and without any abatement of Rent under this Lease to the extent Landlord provides any reasonably required temporary, alternate parking with reasonable access to the Premises. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to Landlord. Any parking passes issued to Tenant pursuant to this Article 33 shall be provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant may validate visitor parking by such method or methods as Landlord may establish, at the validation rate from time to time generally applicable to visitor parking; provided, however, that Landlord shall provide the number of parking spaces set forth in Section 1.8 during the Initial Term at no additional cost to Tenant or to Tenant's business visitors.

ARTICLE 34

LIMITATION ON LIABILITY

34.1 Landlord's Liability . In consideration of the benefits accruing hereunder, Tenant and all of its successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

34.1.1. The sole and exclusive remedy shall be against Landlord's interest in the Project;

34.1.2. Only Landlord shall be sued or named as a party in any suit or action;

34.1.3. No writ of attachment, execution, possession, or sale, will ever be levied against the assets of Landlord, except the Building;

34.1.4. The obligations under this Lease do not constitute personal obligations of any Landlord Indemnified Party (other than Landlord), and Tenant shall not seek recourse against any Landlord Indemnified Party (other than Landlord) or any of their personal assets (other than Landlord's interest in the Project) for satisfaction of any liability in respect to this Lease (and, without limiting the foregoing, neither the negative capital account of any Landlord Indemnified Party, nor any obligation of any Landlord Indemnified Party to restore a negative capital account or to contribute capital to Landlord, shall at any time be deemed to be the property or an asset of Landlord, and neither Tenant nor any of its successors or assigns shall have any right to collect, enforce or proceed against or with respect to any such negative capital account of an Landlord Indemnified Party's obligation to restore or contribute); and

34.1.5. These covenants and agreements are enforceable by Landlord and the other Landlord Indemnified Parties.

ARTICLE 35

CONFIDENTIALITY

Tenant agrees that the nonpublic terms and conditions of this Lease and any documents or information delivered hereunder are confidential and constitute proprietary information. Disclosure of the terms and conditions hereof or any documents or information delivered hereunder could adversely affect the ability of Landlord to negotiate with other tenants or potential tenants of the Building. Tenant and its partners, officers, members, managers, directors, employees, agents, advisors, representatives and attorneys, shall not disclose the terms and conditions of this Lease or any documents or information delivered hereunder to any other person without the prior written consent of Landlord except (a) pursuant to an order of a court of competent jurisdiction, (b) to its lenders or prospective lenders, (c) to accountants who audit its financial statements or prepare its tax returns, (d) to its attorneys, insurers, to any Governmental Authority or person to whom disclosure is required by applicable Law and (e) in connection with any action brought to enforce the terms of this Lease on account of the breach or alleged breach hereof. In the event that Tenant concludes that it is obligated by Law to disclose the terms of this Lease (e.g., pursuant to a filing with the Securities and Exchange Commission (" SEC ") or the NASDAQ Stock Market), Tenant shall provide written notice to Landlord before any public disclosure, and the parties shall use their commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued. The foregoing shall not preclude communications or disclosures by Tenant necessary to implement the provisions of this Lease or to comply with the accounting and disclosure obligations of the SEC or the rules of the NASDAQ Stock Market. If Tenant determines that it is required to file this Lease, a summary thereof, or a notification thereof, and/or descriptions related thereto, to comply with the requirements of an applicable stock exchange, SEC regulation, or any Governmental Authority, including the SEC, Tenant shall use its best efforts to provide the maximum amount of advance written notice of any such required disclosure to Landlord with a minimum advance notice period of five (5) business days. Tenant will provide Landlord with a copy of this Lease marked to show provisions for which Tenant intends to seek confidential treatment. Tenant shall reasonably consider and incorporate Landlord's

comments thereon to the extent consistent with the legal requirements governing redaction of information from material agreements that must be publicly filed.

ARTICLE 36

MISCELLANEOUS

36.1 Rules and Regulations . Tenant shall faithfully observe and comply with the "Rules and Regulations", a copy of which is attached hereto, marked Exhibit "F" , and incorporated herein by this reference (" Rules and Regulations "), and all modifications thereof and additions thereto made from time to time by Landlord. Landlord shall not be responsible to Tenant for the violation or nonperformance by any other tenant or occupant of the Building or the Project of any of said Rules and Regulations.

36.2 Conflict of Laws . This Lease shall be governed by and construed pursuant to the Laws of the State of California (without reference to its conflicts of laws rules or principles).

36.3 Successors and Assigns . Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns (subject to the restrictions on Tenant's right to assign, sublet or transfer contained in Article 27).

36.4 Professional Fees . If Landlord or Tenant should bring suit for possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief against the other party hereunder, or in the event of any other litigation between the parties with respect to this Lease, then all reasonable costs and reasonable expenses, including, without limitation, actual and reasonable professional fees such as appraisers', accountants', and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

36.5 Mortgagee Protection . Tenant shall give Notice to any beneficiary of a deed of trust or mortgage covering the Premises whose name and address shall have been furnished to Tenant of any default on the part of Landlord under this Lease, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, in no event less than sixty (60) days, including time to obtain possession of the Premises by power of sale or a judicial foreclosure if necessary to effect a cure.

36.6 Definition of Landlord . The term "Landlord", as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title of the Premises or the lessees under any ground lease, if any. In the event of any transfer, assignment or other conveyance or transfers of any such title, the original landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or any subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease. Within a reasonable period of time following any transfer described in this Section 36.6 , Landlord shall provide written notice to Tenant of such transfer.

36.7 Identification of Tenant . If more than one person or entity executes this Lease as Tenant: (a) each of them shall be jointly and severally liable for observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease to be observed and performed by Tenant, and (b) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally. The act of or Notice from, or Notice or refund to, or the signature of any one or more of them, with respect to the tenancy of this Lease, including but not limited to any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each

and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted, so given or received such Notice or refund, or so signed.

36.8 Force Majeure . Each party shall have no liability whatsoever to the other party on account of any of the following (" Force Majeure "): (a) the inability of such party to fulfill, or any delay in fulfilling, any of its obligations under this Lease by reason of strike, other labor trouble, governmental preemption or priorities or other controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor resulting therefrom, inclement weather, casualty, earthquake, war, riot, civil commotion, terrorism or any other cause, whether similar or dissimilar to the above, beyond such party's reasonable control (financial condition excepted); or (b) any failure or defect in the supply, quantity, character, or maintenance of electricity, water, intrabuilding network telephone and data cable service, or other service furnished to the Premises by reason of any requirement, act or omission of the public utility or others furnishing the Building with such service, or for any other reason, whether similar or dissimilar to the above, beyond such party's reasonable control (financial condition excepted). If this Lease specifies a time period for performance of an obligation of such party, that time period shall be extended by the period of any delay in such party's performance caused by any of the events of Force Majeure described above. Notwithstanding the foregoing, nothing in this Section 36.8 shall relieve Tenant from the obligation to pay any Rent or extend the time for payment of any Rent.

36.9 Terms and Headings . The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Article and Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

36.10 Examination of Lease . Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

36.11 Time . Time is of the essence with respect to the performance of every provision of this Lease in which time is a factor.

36.12 Prior Agreement; Amendments . This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter, written or verbal, shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

36.13 Severability . Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

36.14 Recording . Tenant shall not record this Lease or a short form memorandum hereof without the consent of Landlord (in its sole and absolute discretion), which consent may be conditioned upon Tenant's delivery to Landlord of a fully executed quitclaim releasing Tenant's interest in the Premises, the Project or any portion thereof.

36.15 Modification for Lenders . If, in connection with obtaining construction, interim or permanent financing for the Project the lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or condition its consent thereto, provided that such modifications do not materially increase the obligations or costs of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

36.16 Financial Statements . At any time during the Term of this Lease, Tenant shall, upon ten (10) days' Notice from Landlord, provide Landlord with its current financial statements and financial statements of the two (2) years prior to the year in which Landlord's Notice was given (together with, if Tenant's obligations under this Lease are guaranteed, the guarantor's current financial statements and financial statements of the two (2) years prior to the year in which Landlord's Notice was given); provided, however, that Tenant may refer Landlord to Tenant's financial reports filed with the SEC, which shall satisfy Tenant's obligations under this Section with respect to the

years for which such reports on file with the SEC are readily available . Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. All financial statements shall be certified as true and correct by Tenant's chief financial officer and Tenant agrees that Landlord may share such financial statements with bona fide prospective lenders or purchasers of the Property. Notwithstanding the foregoing, Tenant shall not be required to provide such financial statements more than once in each consecutive twelve (12) month period during the Term unless (a) Tenant is in default under this Lease, or (b) requested (i) in connection with a proposed sale or transfer of the Building by Landlord, or (ii) by an investor of Landlord, any Landlord Indemnified Party or any lender or proposed lender of Landlord or any Landlord Indemnified Party.

36.17 Quiet Enjoyment . Landlord covenants and agrees with Tenant that, upon Tenant paying the Rent required under this Lease and performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall during the Term, peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

36.18 Tenant as Corporation, Partnership or Limited Liability Company . If Tenant is a corporation, partnership or limited liability company, Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that it is an entity duly qualified to do business in California and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf, in the case of a corporation, in accordance with its by-laws and with a duly adopted resolution of the board of directors of Tenant, a copy of which shall be delivered to Landlord upon execution hereof by Tenant, in the case of a partnership, in accordance with the partnership agreement and the most current amendments thereto, if any, copies of which shall be delivered to Landlord upon execution hereof by Tenant, and, in the case of a limited liability company, in accordance with its governing documents and any documents required thereby, copies of which shall be delivered to Landlord upon execution hereof by Tenant, and that this Lease is binding upon Tenant in accordance with its terms.

36.19 CASp Disclosure . For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant that the Building Common Areas, Project Common Areas and Premises, as of the date of this Lease, have not been inspected by a Certified Access Specialist (CASp), as that term is defined in California Civil Code Section 55.52. In accordance with subsection (e) of Section 1938 of the California Civil Code, Tenant is further notified as follows:

> A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

ARTICLE 37

SIGNAGE

Landlord retains absolute control over the exterior appearance of the Building and the Project and the exterior appearance of the Premises as viewed from the Building Common Areas and Project Common Areas. Tenant will not, without Landlord's prior written consent, install, or permit to be installed, any drapes, furnishings, signs, lettering, designs, advertising or any items that will in any way alter the exterior appearance of the Building, the Project or the exterior appearance of the Premises as viewed from the Building Common Areas and Project Common Areas. Any sign, advertising, design, or lettering installed by Tenant shall be considered an Alteration and shall be subject to the provisions of Article 15 ; provided that Landlord shall have the right to withhold its consent to the same in its sole and absolute discretion. Notwithstanding the foregoing, Tenant shall have the nonexclusive right, without obligation, to have its name (including its logo) displayed on signage constituting its pro rata portion

of the Project Signage (as that term is defined below) as reasonably determined by Landlord based on Tenant's Percentage (collectively, " Tenant's Signage "), subject to the terms and conditions set forth in this Article 37 . Tenant hereby acknowledges that, as of the Effective Date, Landlord has not received approval from the City of San Diego (or any other authority with jurisdiction over the Project) for any exterior signage for the Project and, accordingly, Tenant's right to any such signage is contingent on such approval. Landlord shall use commercially reasonable efforts to obtain such approval as soon as reasonably practicable after the Effective Date. In addition, the specifications of Tenant's Signage (including, without limitation, the dimensions and configuration thereof) shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, provided that such specifications are consistent with Landlord's sign program for the Project and all applicable Laws. As used herein, the " Project Signage " shall mean all exterior signage for the Project (including, without limitation, signs on the side(s) of the Building facing Lusk Boulevard and/or Barnes Canyon Road (e.g., building-top signage and/or façade signage above the main entrance(s) to the Building) and one or more monument signs), which Project Signage (including the size, location and existence thereof) shall be determined by Landlord in its reasonable discretion. The construction and installation of Tenant's Signage shall be performed by Tenant (upon Landlord's approval thereof), at Tenant's sole cost and expense subject to the Tenant Improvement Allowance, which may be applied toward the cost of Tenant's Signage as set forth in the Work Letter Agreement. Prior to installation, Tenant shall deliver to Landlord a drawing depicting the design, size, location, specifications, graphics, materials and colors of Tenant's Signage, all of which shall be consistent with Landlord's sign program and the Rules and Regulations. Tenant's Signage shall be subject to any applicable review and approval by the City of San Diego and any other authorities with jurisdiction over the Project, and Tenant shall obtain all applicable permits and authorizations by Governmental Authorities prior to installation of Tenant's Signage. After installation, Tenant shall maintain Tenant's Signage in good condition and repair at all times through the Term. Tenant shall remove Tenant's Signage upon the expiration or earlier termination of this Lease and shall repair any damage caused thereby. The maintenance and removal of Tenant's Signage shall be performed at Tenant's sole cost and expense. All signage rights granted to Tenant under this Lease are personal to the original Tenant named herein , and , except in connection with a Permitted Transfer to a Permitted Transferee, may not be assigned or transferred without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion.

ARTICLE 38

EXECUTIVE ORDER 13224

Landlord and Tenant each hereby represent and warrant to the other party that it is not: (a) in violation of any Anti-Terrorism Law (defined below); (b) conducting any business or engaging in any transaction or dealing with any Prohibited Person (defined below), including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person (excepting holders of publicly traded shares of the party making such representation and warranty); (c) dealing in, or otherwise engaging in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224; (d) 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 (e) a Prohibited Person, nor are any of its partners, members, managers, officers or directors a Prohibited Person. As used herein, " Anti-Terrorism Law " is defined as any Law relating to terrorism, anti-terrorism, money laundering or anti-money laundering activities, including, without limitation, Executive Order No. 13224 and Title 3 of the USA Patriot Act. As used herein " Executive Order No. 13224 " is defined as Executive Order No. 13224 on Terrorist Financing effective September 24, 2001, and relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism." " Prohibited Person " is defined as: (i) a person or entity that is listed in the Annex to Executive Order No. 13224; (ii) a person or entity with whom Tenant or Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (iii) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, http://www.treas.gov/ofac/t11sdn.pdf or at any replacement website or other official publication of such list. " USA Patriot Act " is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56).

ARTICLE 39

WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, LANDLORD AND TENANT WAIVE THE RIGHT TO A TRIAL BY JURY.

ARTICLE 40

TENANT REPRESENTATIONS

Tenant represents and warrants to Landlord as of the date hereof and continuing thereafter as follows:

(a) The execution and delivery of this Lease by Tenant will not result in a breach of the terms or provisions of, or constitute a default (or a condition that, upon notice or lapse of time, or both, would constitute a default) under its organizational documents or any indenture, agreement, or obligation by which Tenant is bound, and will not constitute a violation of any Law applicable to Tenant.

(b) The person executing this Lease on Tenant's behalf is duly authorized to so act; that Tenant is duly organized, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the Laws of the state of its organization and the Laws of the jurisdiction in which the Building is located, and has the power and authority to enter into this Lease; and that all action required to authorize Tenant and such person to enter into this Lease has been duly taken.

(c) Any financial statements provided by Tenant are true, correct and complete in all material respects and do not omit to state a fact that would be material to Tenant's financial condition. There has been no material adverse change in Tenant's financial condition since Tenant provided such financial statements.

(d) Tenant is in compliance with all applicable anti-money laundering Laws, including, without limitation, the USA Patriot Act, and the Laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order No. 13224. Excepting holders of publicly traded shares of Tenant, Tenant is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and Tenant is not a person otherwise identified by any Governmental Authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of Executive Order No. 13224 are published under the internet website address www.ustreas.gov/offices/enforcement/ofac.

ARTICLE 41

ADDITIONAL PROVISIONS

41.1 Environmental Assessments . Tenant hereby acknowledges receipt of the Phase I Environmental Site Assessment dated August 16, 2016, prepared by AES Due Diligence, Inc. regarding the Project (" Original Phase I Assessment "); a copy of the executive summary of the Original Phase I Assessment is attached hereto as Exhibit "H" . The Original Phase I Assessment shall serve as the "baseline" for determining the environmental condition of the Project prior to Tenant's occupancy thereof; provided, however, that such presumption may be refuted with respect to, and in no event shall Tenant have any liability, responsibility, duty or obligation for, (i) any pre-existing Hazardous Materials conditions to the extent not caused, contributed to or exacerbated by a Tenant Party, (ii) any Hazardous Materials conditions outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, (iii) any migration of Hazardous Materials into or under the Premises from areas outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, or (iv) any release of Hazardous Materials to the extent caused, contributed to or exacerbated by Landlord or Landlord's employees, agents or representatives. In addition to the surrender obligations set forth elsewhere in this Lease (including, without limitation, Section 15.2 and Article 31), upon the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall (a) cause a Phase I environmental assessment (or similar non-invasive assessment) of the Project (" Phase I Surrender Assessment ") to be

performed and deliver the results thereof to Landlord no later than thirty (30) days following such expiration or earlier termination (but in no event shall the Phase I Surrender Assessment be dated more than ten (10) days prior to such expiration or earlier termination); and (b) if and to the extent recommended by the Phase I Surrender Assessment and consented to by Landlord in writing, cause a Phase II environmental assessment (or similar additional assessment) of the Project (" Phase II Surrender Assessment ") to be performed and deliver the results thereof to Landlord no later than thirty (30) days following the date of the Phase I Surrender Assessment. In addition, Landlord shall have the right , if Landlord reasonably believes, in its sole discretion, that Tenant has used, stored or released Hazardous Materials at the Premises or any part of the Project, to hire, or to cause Tenant to hire, an environmental consultant to conduct a physical inspection of the Project (" Environmental Inspection ") upon the expiration or earlier termination of this Lease, which inspection shall be at Tenant's sole cost and expense. The Phase I Surrender Assessment and any Phase II Surrender Assessment and/or Environmental Inspection, as the same compare to the Original Phase I Assessment, shall be used to, among other things, determine the extent of Tenant's compliance (or noncompliance) with Section 8.3 above. In the event that Landlord, in its sole and absolute discretion, brings a claim against a third party in connection with (i) any pre-existing Hazardous Materials conditions to the extent not caused, contributed to or exacerbated by a Tenant Party, (ii) any Hazardous Materials conditions outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, (iii) any migration of Hazardous Materials into or under the Premises from areas outside of the Premises to the extent not caused, contributed to or exacerbated by a Tenant Party, or (iv) any release of Hazardous Materials to the extent caused, contributed to or exacerbated by Landlord or Landlord's employees, agents or representatives , then Landlord shall seek recovery of the cost of such Phase I Surrender Assessment, Phase II Surrender Assessment and/or Environmental Inspection and shall promptly reimburse Tenant for same upon recovery, if any.

41.2 Early Access . Landlord shall permit Tenant and its agents to enter the Premises approximately six (6) weeks prior to the Commencement Date (" Early Access Period ") for the sole purpose of examining the Tenant Improvements (to the extent permitted under the Work Letter Agreement or otherwise agreed to by Landlord), installing, at Tenant's sole cost and expense, its furniture, fixtures, equipment and cabling in the Premises and as otherwise reasonably necessary to perform any facility validations required by Governmental Authorities for Tenant's Permitted Use, but in no event shall Tenant's failure to complete such installations or validations during the Early Access Period extend the Commencement Date. Any such entry shall be in a manner and upon terms and conditions and at times reasonably satisfactory to Landlord's representative. The foregoing license to enter the Premises prior to the Commencement Date is, however, conditioned upon Tenant's agents, contractors and their subcontractors and employees reasonably cooperating and not unreasonably interfering with the work being performed by Landlord. If at any time such entry shall unreasonably interfere with the work being performed by Landlord, this license may be withdrawn by Landlord upon twenty-four (24) hours written notice to Tenant. Tenant shall be liable for any damages caused by Tenant's activities at the Premises except to the extent caused by Landlord's or Landlord's contractors' gross negligence or willful misconduct. Such license is further conditioned upon the compliance by Tenant's contractors with all requirements imposed by Landlord on third party contractors, including, without limitation, the maintenance by Tenant and its contractors and subcontractors of workers' compensation and public liability and property damage insurance in amounts and with companies and on forms satisfactory to Landlord, with certificates of such insurance being furnished to Landlord prior to proceeding with any such entry. The entry shall be deemed to be under all of the provisions of this Lease except as expressly set forth in this Section 41.2 . During the Early Access Period, Tenant shall have no obligation to pay Basic Rent, Operating Expenses, Real Property Taxes or costs for electricity, gas or HVAC (provided that Tenant's usage thereof during such Early Access Period is not excessive). Landlord shall not be liable in any way for any injury, loss or damage which may occur to any such work being performed by Tenant, the same being solely at Tenant's risk, except to the extent caused by Landlord's or Landlord's contractors' gross negligence or willful misconduct. All costs and expenses in connection with or arising out of the performance of any work by Tenant during such early entry shall be borne by Tenant, and all payments therefor shall be made by Tenant promptly as they become due. Tenant shall, at its sole cost and expense, comply with all applicable laws, ordinances, regulations and policies governing its work. Tenant shall defend, indemnify and hold Landlord and its members, agents, employees, partners, and their respective employees, partners, officers, directors, agents, representatives, successors and assigns, harmless from and against any and all suits, claims, actions, losses, costs, liabilities or expenses (including reasonable attorneys' fees and claims for workers' compensation) to the extent arising out of or in connection with any and all work performed by or (excepting the Tenant Improvements or any other work performed by Landlord) on behalf of Tenant or Tenant's contractors during such early entry (including, but not limited to, claims for breach of warranty, personal injury or property damage), except to the extent caused by Landlord's or Landlord's contractors' gross negligence or

willful misconduct . Landlord shall have the right, in Landlord's sole and absolute discretion, to settle, compromise, or otherwise dispose of any and all suits, claims, and actions against any of the indemnified parties arising out of or in connection with the work performed by Tenant during any early entry. Tenant shall coordinate such entry with Landlord's building manager, and such entry shall , except as expressly set forth in this Section 41.2 , be made in compliance with all terms and conditions of this Lease and the Rules and Regulations attached hereto.

[*signatures on following page*]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date written below.

LANDLORD:

6262 LUSK INVESTORS LLC,
a California limited liability company

By: B/L Lusk LLC,
a California limited liability company,
Managing Member

By: /s/ Steven Bollert
Name: Steven Bollert
Its: Managing Partner
Date: 02/27/2017

TENANT:

CYTORI THERAPEUTICS, INC.,
a Delaware corporation

By: /s/ Tiago Girão
Name: Tiago Girão
Its: CFO
Date: 02/22/2017

By:
Name:
Its:
Date:

EXHIBIT "A-I"

OUTLINE OF PREMISES

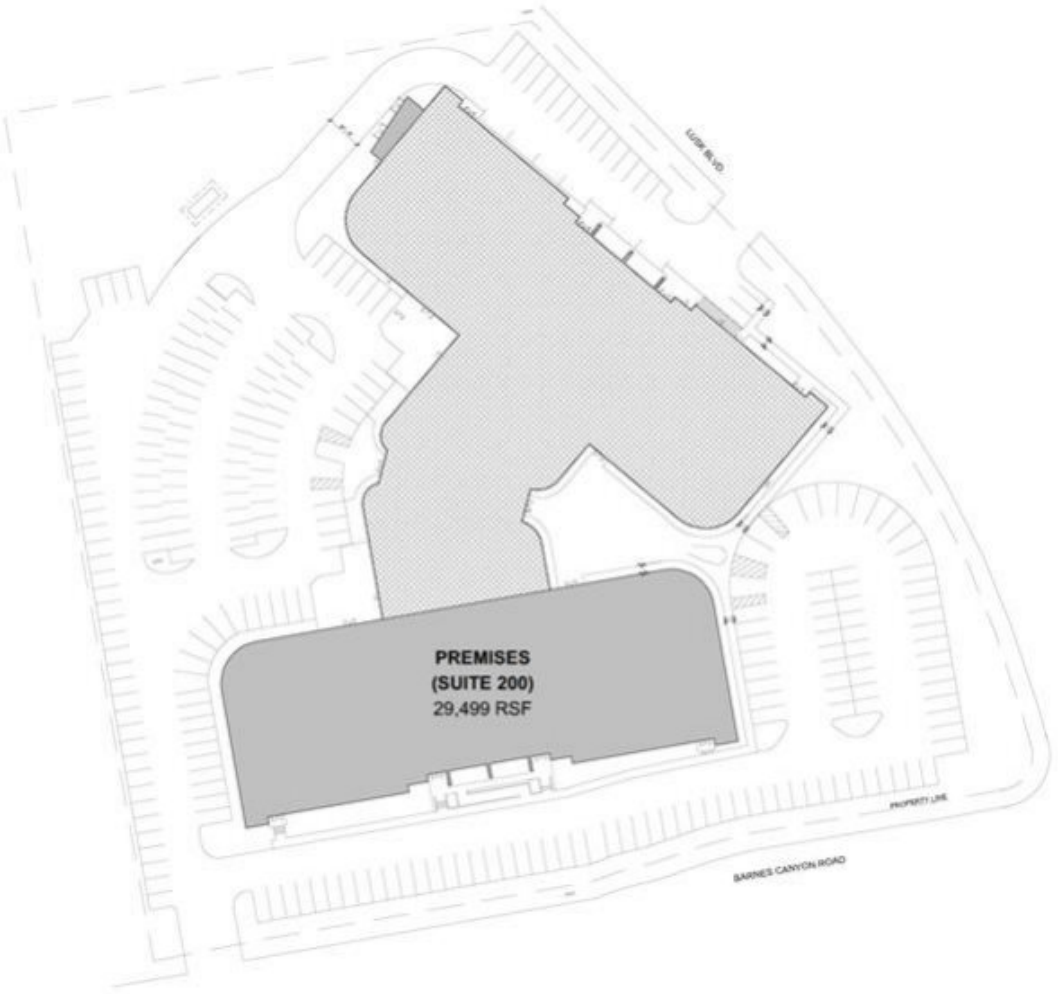

EXHIBIT "A-II"

PROJECT SITE PLAN

The following site plan is intended only to show the approximate general outline of the Project, which is subject to change in accordance with the Lease. This site plan is not to be scaled and any measurements or distances shown thereon are approximations only.

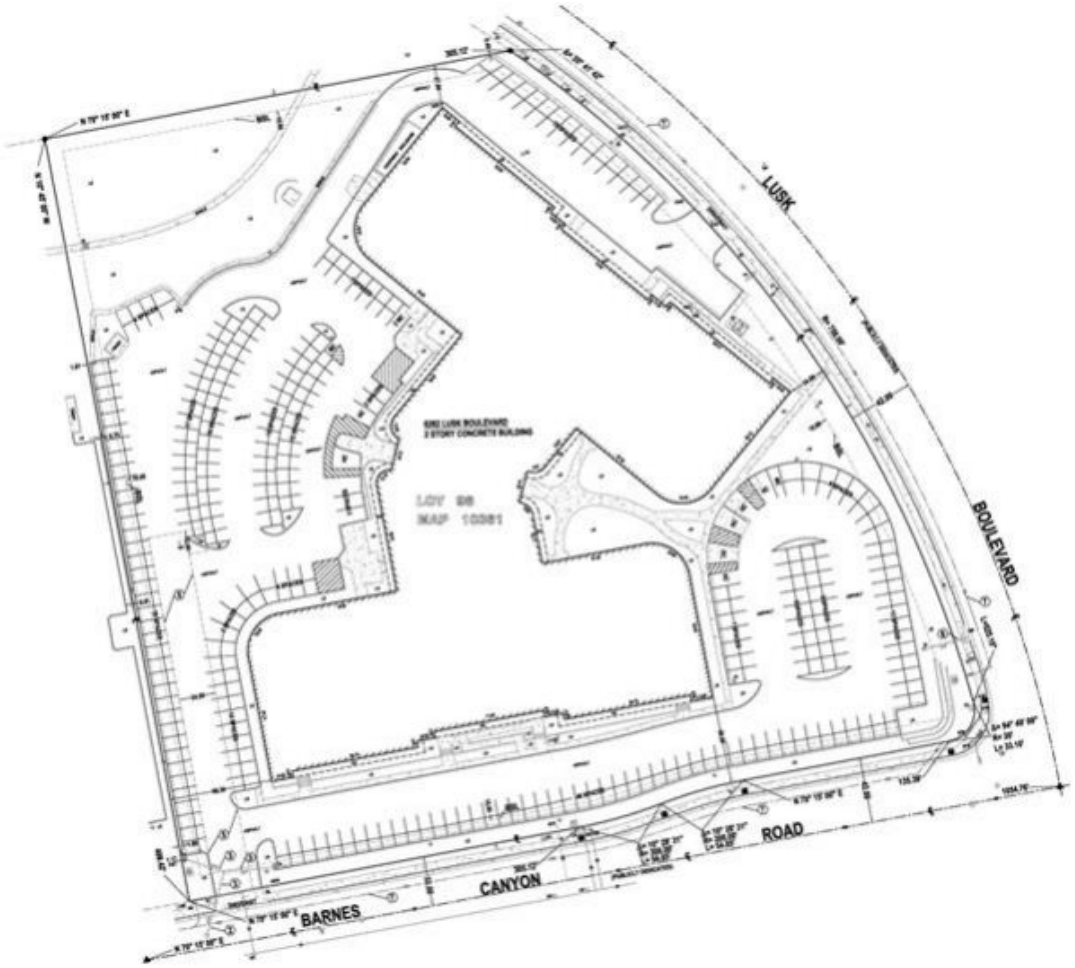

EXHIBIT "A-III"

LEGAL DESCRIPTION OF PROJECT SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 98 OF LUSK INDUSTRIAL PARK, UNIT NO. 3, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10361, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 31, 1983.

EXCEPTING THEREFROM ALL COAL, OIL, GAS, PETROLEUM, AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SUCH PROPERTY, GRANTOR ITS SUCCESSORS AND ASSIGNS, RETAINING THE EXCLUSIVE TITLE AND RIGHT TO REMOVE SAID SUBSTANCES, TOGETHER WITH SOLE RIGHT TO NEGOTIATE AND CONCLUDE LEASES AND AGREEMENTS WITH RESPECT TO ALL SUCH SUBSTANCES UNDER THE PROPERTY, AND TO USE THOSE PORTIONS OF THE PROPERTY WHICH UNDERLIE A PLANE PARALLEL TO AND 500 FEET BELOW THE PRESENT SURFACE OF SAID PROPERTY FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SUCH SUBSTANCES FROM THE PROPERTY BY MEANS OF WELLS DRILLED INTO OR THROUGH SAID PORTIONS OF THE PROPERTY FROM DRILL SITES LOCATED ON OTHER PROPERTY, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT GRANTOR, ITS SUCCESSORS AND ASSIGNS SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF THE PROPERTY OR TO USE THE PROPERTY OR HAVE ANY PORTION THEREOF ABOVE THE LEVEL OF THE AFORESAID PLANE, AS RESERVED IN DEED RECORDED DECEMBER 30, 1983 AS FILE NO. 83-476047 OF OFFICIAL RECORDS.

APN: 341-033-12

EXHIBIT "B"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT is entered into as of February ___, 2017, by and between 6262 LUSK INVESTORS LLC, a California limited liability company (" Landlord "), and CYTORI THERAPEUTICS, INC., a Delaware corporation (" Tenant ").

R E C I T A L S:

A. Concurrently with the execution of this Work Letter Agreement, Landlord and Tenant have entered into a lease (" Lease ") covering certain premises (" Premises ") more particularly described in the Lease. Except as otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Lease.

B. In order to induce Tenant to enter into the Lease (which is hereby incorporated by reference to the extent applicable) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant hereby agree as follows:

1. **Tenant Improvements** . Reference herein to " Tenant Improvements " shall include all work to be done in the Premises pursuant to the Space Plan and Construction Documents (defined below), including, but not limited to, partitioning, doors, ceilings, floor coverings, wall finishes (including paint and wallcovering), electrical (including lighting; switching; outlets; telephone, excluding any and all telephone and data wire and cable of any type or kind, including the exclusion of, but not limited to the exclusion of, intrabuilding network telephone and data cable; etc.); plumbing; heating, ventilating and air conditioning; fire protection; and cabinets and other millwork. For purposes of clarification, the Tenant Improvements shall include construction of the two (2) adjacent restrooms shown on the Space Plan.

2. **Tenant Improvement Allowance; Excess Costs** . The Tenant Improvements shall be constructed by Landlord at Tenant's sole cost and expense (by reimbursement to Landlord for Excess Costs as set forth below), excepting costs and expenses up to the amount of the Tenant Improvement Allowance, which shall be Landlord's responsibility. In the event that the Tenant Improvement Allowance exceeds the cost of the Tenant Improvements, any remaining portion of the Tenant Improvement Allowance shall accrue to the sole benefit of Landlord, it being agreed that Tenant shall not be entitled to any credit, offset, abatement or payment with respect thereto. Landlord shall be entitled to deduct from the Tenant Improvement Allowance a construction management fee for Landlord's oversight of the Tenant Improvements in an amount equal to five percent (5%) of the total hard costs of the Tenant Improvements. Any and all out-of-pocket amounts actually incurred by Landlord in connection with the Tenant Improvements in excess of the Tenant Improvement Allowance, and any and all increased costs and expenses actually incurred by Landlord that arise out of any change requested by Tenant pursuant to Paragraph 7 below or any Tenant Delay (defined below), shall be deemed " Excess Costs ." Any and all Excess Costs shall be deemed Rent under the Lease and Tenant shall pay to Landlord such Excess Costs within ten (10) business days after demand therefor, provided such demand includes invoices or other documentation reasonably evidencing such Excess Costs. Tenant's failure to timely pay any Excess Costs shall constitute a Tenant Default under the Lease. The statements of costs submitted to Landlord by Landlord's contractors shall be conclusive for purposes of determining the actual cost of the items described therein.

3. **Work Schedule** . Within a reasonable period of time after the mutual execution of the Lease, Landlord shall deliver to Tenant, for Tenant's review and approval, a schedule (" Work Schedule ") setting forth a timetable for the planning and completion of the installation of the Tenant Improvements to be constructed in the Premises. The Work Schedule shall set forth each of the various items of work to be done by or approval to be given by Landlord and Tenant in connection with the completion of the Tenant Improvements. The Work Schedule shall be submitted to Tenant for its approval and, upon approval by both Landlord and Tenant, such Work Schedule shall become the basis for completing the Tenant Improvements. If Tenant fails to provide written approval of the Work Schedule, as it may be modified after discussions between Landlord and Tenant, within five (5) business days after the date the Work Schedule is first delivered to Tenant by Landlord, the Work Schedule shall be deemed approved.

4. **Space Plan** . Landlord and Tenant have approved the space plan attached to this Work Letter Agreement as Schedule B-1 (" Space Plan ") for the installation of Tenant Improvements to be constructed in the Premises by Landlord.

5. **Construction Documents** . Based upon the approved Space Plan, Landlord's architect and/or space planner shall prepare final working drawings and/or construction documents for the Tenant Improvements containing architectural drawings and mechanical, plumbing, fire sprinkler and electrical engineering drawings (" Construction Documents "). Landlord shall submit the Construction Documents to Tenant for its review. If Tenant fails to approve the Construction Documents within five (5) calendar days after delivery by Landlord thereof the Construction Documents shall be deemed approved.

6. **Cost of Space Plan and Construction Documents** . The cost of preparing the Space Plan and the Construction Documents, not to exceed one (1) major and one (1) minor revision to the Space Plan with no modifications to the Construction Documents, shall be deducted from the Tenant Improvement Allowance.

7. **Changes in Plan and Construction Documents** . Any changes requested by Tenant in the Construction Documents or other plans and specifications after approval thereof by Tenant shall be subject to Landlord's approval and, if approved, shall be prepared at Tenant's sole cost and expense, and any excess costs resulting from such changes shall also be at Tenant's sole cost and expense. Furthermore, Tenant shall be liable for any resulting delays in completing the Tenant Improvements and for any increased cost in completing the Tenant Improvements, if any, resulting from such delays. Any such delays shall be "Tenant Delays" and shall impact the Commencement Date of the Lease as provided in Paragraph 11 below.

8. **Standard Tenant Improvements** . The Tenant Improvements shall be constructed in accordance with the Construction Documents using only Building standard materials and quantities as established by Landlord from time to time and applied generally to construction of improvements within the Building (" Building Standard Improvements "), except as specifically noted and drawn on the Space Plan.

9. **Non-Standard Tenant Improvements** . Landlord shall permit Tenant to deviate from the Building Standard Improvements, provided that (a) the deviations shall not be of a lesser quality than the Standards; (b) the total lighting for the Premises shall not exceed 1.25 watts per Rentable Square Foot; (c) the deviations conform to applicable governmental regulations, including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), and necessary governmental permits and approvals have been secured; (d) the deviations do not require building service beyond the level normally provided to other tenants in the Building and do not overload the floors; (e) Landlord has determined in its sole discretion that the deviations are of a nature and quality that are consistent with the overall objectives of Landlord for the Building; and (f) the deviations are noted and drawn on the Space Plan.

10. **Construction of Tenant Improvements** . After the Construction Documents have been prepared and approved, the final pricing has been approved and a building permit for the Tenant Improvements has been issued, Landlord shall cause its contractor to begin installation of the Tenant Improvements in accordance with the Construction Documents. Landlord shall supervise the completion of such work and shall use its best efforts to secure substantial completion of the work in accordance with the Work Schedule. The cost of such work shall be paid as provided in Paragraph 2 above. Landlord shall not be liable for any direct or indirect damages as a result of delays in construction beyond Landlord's reasonable control, including, but not limited to, acts of God, inability to secure governmental approvals or permits, governmental restrictions, strikes, availability of materials or labor or delays by Tenant (or its architect or anyone performing services on behalf of Tenant). In the event that increases occur in the cost of the Tenant Improvements due to the requirements of any Governmental Authority as a result of Tenant's intended use or occupancy, Tenant shall pay Landlord the amount of such increase within five (5) days of Landlord's notice.

11. **Substantial Completion** . The Tenant Improvements shall be deemed " Substantially Complete " (and " Substantial Completion " shall be deemed to have occurred) upon the date upon which (i) construction of the Tenant Improvements in the Premises has been substantially completed pursuant to the Construction Documents, with the exception of any minor punch list items and any Tenant fixtures, work-stations, built-in furniture, or equipment to be installed by Tenant, and (ii) a temporary or permanent certificate of occupancy or other equivalent approval from the local governmental authority has been issued permitting occupancy of the Premises (such as sign off on the building inspection cards). If there shall be a delay in Substantial Completion of the Tenant Improvements as a result of:

(a) Tenant's request for materials, finishes or installations other than those readily or reasonably available;

(b) Tenant's request to deviate from the Building Standard Improvements;

(c) Tenant's changes in the Space Plan or Construction Documents after approval by Landlord;

(d) Tenant's failure to timely perform any obligation or provide any approval required of Tenant hereunder (except to the extent such delay is caused by Landlord or Landlord's agents, employees or contractors); or

(e) Tenant's failure to timely pay any Excess Costs;

(each of the foregoing, a " Tenant Delay ") then the Commencement Date of the Term of this Lease shall be the date that the Tenant Improvements would have been Substantially Complete but for such Tenant Delay, as reasonably determined by Landlord. The Tenant Improvements shall be deemed Substantially Complete notwithstanding the fact that minor details of construction, mechanical adjustments or decorations that do not materially interfere with Tenant's use and enjoyment of the Premises remain to be performed (items normally referred to as "punch list" items). Landlord shall complete all such punch list items as soon as reasonably practicable after Substantial Completion.

[*signatures on following page*]

IN WITNESS WHEREOF, this Work Letter Agreement is executed as of the date first written above.

LANDLORD:

6262 LUSK INVESTORS LLC,
a California limited liability company

By: B/L Lusk LLC,
a California limited liability company,
Managing Member

By: /s/ Steven Bollert
Name: Steven Bollert
Its: Managing Partner
Date: 02/27/2017

TENANT:

CYTORI THERAPEUTICS, INC.,
a Delaware corporation

By: /s/ Tiago Girão
Name: Tiago Girão
Its: CFO
Date: 02/22/2017

By: _____
Name: _____
Its: _____
Date: _____

SCHEDULE "B- 1 "

SPACE PLAN

ACCEPTED: February 22, 2017

TENANT: CYTORI THERAPEUTICS, INC., a Delaware corporation

BY:	/s/ Tiago Girão
NAME:	Tiago Girão
TITLE:	CFO

NOTE: Upon signing this Space Plan, all of Tenant's requirements have been addressed and I have full authority to bind Tenant to this Space Plan. Any changes to this Space Plan after this date shall be at Tenant's sole cost and expense.

EXHIBIT "C"

FORM OF MEMORANDUM OF LEASE TERMS

MEMORANDUM OF LEASE TERMS

To: Date:

Re: Lease Agreement ("Lease") dated _____, 20__, between 6262 LUSK INVESTORS LLC, a California limited liability company, Landlord, and _____, a _____, Tenant, concerning Suite ____ located at 6262 Lusk Boulevard, San Diego, California 92121 ("Premises").

Dear _____:

In accordance with the Lease, we wish to advise and/or confirm as follows:

1. That the Premises have been accepted herewith by Tenant as being "Substantially Complete" (as defined in the Lease) subject to and in accordance with the terms of the subject Lease and that, to the best of Tenant's knowledge, there is no deficiency in construction, other than any "punch list" items.

2. That Tenant has possession of the Premises and acknowledges that under the provisions of the Lease the Term (as defined in the Lease) of said Lease shall commence as of _____ for a term of _____ ending on _____.

3. That in accordance with the Lease, Rent (as defined in the Lease) commenced to accrue on _____.

4. If the Commencement Date (as defined in the Lease) of the Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in Lease.

5. Rent is due and payable in advance on the first day of each and every month during the Term of Lease. Your Rent checks should be made payable to _____ at _____ _____.

6. The number of Rentable Square Feet (as defined in the Lease) within the Premises is _____ square feet.

7. The number of Rentable Square Feet within the Building is _____ square feet.

8. Tenant's Percentage, as adjusted based upon the number of Rentable Square Feet within the Premises, is _____%.

AGREED AND ACCEPTED:

TENANT:

_____

_____

By: _____
Name: _____
Its: _____
Date: _____

LANDLORD:

6262 LUSK INVESTORS LLC,
a California limited liability company

By: B/L Lusk LLC,
a California limited liability company,
Managing Member

By: _____
Name: _____
Its: _____
Date: _____

SAMPLE ONLY – NOT FOR EXECUTION

EXHIBIT "D"

LETTER OF CREDIT TERMS

1. Upon delivery to Landlord of a copy of this Lease executed by Tenant, Tenant shall deliver to Landlord, as collateral for the full performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer as a result of any Tenant Default under this Lease, including, but not limited to, any post lease termination damages under Section 1951.2 of the California Civil Code, a standby, irrevocable letter of credit (" Letter of Credit "), on a form acceptable to Landlord in its sole but reasonable discretion and containing the terms required herein, with a face amount in the Letter of Credit Amount (as defined in Section 7.1 of this Lease), naming Landlord as beneficiary. The Letter of Credit shall be issued by a money-center, solvent and nationally recognized bank, with a branch office in Southern California (unless the Letter of Credit contains a draw-by-fax provision), that will negotiate a letter of credit, and whose deposits are insured by the FDIC (as defined below) and shall not be secured by cash deposited by Tenant with the issuing bank or by a pledge by Tenant to the issuing bank of cash or other collateral belonging to Tenant. The issuing bank shall be acceptable to Landlord in Landlord's reasonable discretion, and shall permit multiple and partial draws on the Letter of Credit. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, renewal or extension) in the Letter of Credit Amount through the date (" Letter of Credit Expiration Date ") which is thirty (30) days after the expiration of the Term of this Lease, or any extension thereof. If the Letter of Credit held by Landlord expires earlier than the Letter of Credit Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord not later than thirty (30) days prior to the expiration date of the Letter of Credit then held by Landlord. Any renewal or replacement Letter of Credit shall comply with all of the provisions of this Exhibit "D" and shall remain in effect (whether through replacement, renewal or extension) in the Letter of Credit Amount through the Letter of Credit Expiration Date upon the same terms as the expiring Letter of Credit or such other terms as may be acceptable to Landlord in its sole but reasonable discretion. The term of the Letter of Credit shall be for at least one (1) year and shall contain an "evergreen clause" that prevents the expiration of the Letter of Credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days notice to Landlord prior to the expiration date or nonrenewal.

2. Landlord shall have the immediate right to draw up to the then-aggregate face amount of the Letter of Credit, in whole or in part, at any time and from time to time (each of the following being a " Letter of Credit Draw Event "): (a) if such amount is due to Landlord under the terms and conditions of this Lease, beyond applicable notice and cure periods; (b) if Landlord incurs any costs following the expiration or any earlier termination of the Term in connection with its performance of any obligations that Tenant has failed to perform in a timely manner beyond any applicable notice and cure period (including, without limitation, under Section 15.2 and Article 31 of this Lease), whether or not a Tenant Default occurs as a result of Tenant's failure to timely perform such obligations; (c) if the Letter of Credit held by Landlord expires (or is set to expire) earlier than the Letter of Credit Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), and Tenant fails to deliver to Landlord, at least fifteen (15) days prior to the expiration date of the Letter of Credit then held by Landlord, a renewal or substitute Letter of Credit that is in effect and that complies with the provisions of this Lease, including the Letter of Credit Amount required under this Lease (such failure in this clause (c) hereinafter being referred to as a " Renewal Failure "); (d) the occurrence of any event described in Section 25.1.7 of this Lease (whether or not a Tenant Default occurs as a result thereof); and/or (e) if: (i) any of the issuing bank's Fitch Ratings (or other comparable ratings to the extent the Fitch Ratings are no longer available) have been reduced below a "BBB+" rating, or (ii) there is otherwise a material adverse change in the financial condition of the issuing bank, and Tenant has failed to provide Landlord with a replacement Letter of Credit that complies with the provisions of this Lease, including the Letter of Credit Amount required under this Lease, within ten (10) business days following Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary) (such failure in this clause (e) hereinafter being referred to as an " Issuing Bank Replacement Failure "). No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. In addition, in the event the issuing bank is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity (as applicable, " FDIC "), and the FDIC does not honor the commitments of such issuing bank, then, effective as of the date such receivership or conservatorship occurs, the Letter of Credit shall be deemed to fail to meet the

requirements of this Lease and, within ten (10) business days following Landlord's notice to Tenant of such receivership or conservatorship (" Letter of Credit FDIC Replacement Notice "), Tenant shall replace the Letter of Credit with a substitute letter of credit from a different issuer (which issuer shall be acceptable to Landlord in its reasonable discretion) and that complies in all respects with the requirements of this Lease. If Tenant fails to replace the Letter of Credit with a conforming, substitute letter of credit pursuant to the terms and conditions of this Section 2 as a result of a Renewal Failure or an Issuing Bank Replacement Failure, then, notwithstanding anything in this Lease to the contrary, Landlord shall have the right to declare a Tenant Default under this Lease for which there shall be no notice or grace or cure periods being applicable thereto (other than the aforesaid notice and ten (10) business day period). Tenant shall be responsible for the payment of any and all costs incurred with the review of any replacement Letter of Credit (including, without limitation, Landlord's reasonable attorneys' fees), which replacement is required pursuant to this Section 2 or is otherwise requested by Tenant.

3. Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the Letter of Credit upon the occurrence of any Letter of Credit Draw Event. Upon the occurrence of any Letter of Credit Draw Event, Landlord may, but without obligation to do so, and without notice to Tenant, draw upon the Letter of Credit, in part or in whole, to cure any such Letter of Credit Draw Event and/or to compensate Landlord for any and all damages of any kind or nature sustained or which Landlord reasonably estimates that it will sustain resulting from Tenant's Default under this Lease or other Letter of Credit Draw Event, and/or to compensate Landlord for any and all damages arising out of, or incurred in connection with, the termination of this Lease, including, without limitation, those specifically identified in Section 1951.2 of the California Civil Code. The use, application or retention of the Letter of Credit, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, and such Letter of Credit shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled, provided that in no event shall Landlord be entitled to a "double recovery" of any damages. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner. Tenant agrees and acknowledges that: (a) the Letter of Credit constitutes a separate and independent contract between Landlord and the issuing bank, (b) Tenant is not a third party beneficiary of such contract, (c) Tenant has no property interest whatsoever in the Letter of Credit or the proceeds thereof, and (d) in the event Tenant becomes a debtor under any chapter of the U.S. Bankruptcy Code, Tenant is placed into receivership or conservatorship, and/or there is an event of a receivership, conservatorship or a bankruptcy filing by, or on behalf of, Tenant, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the U.S. Bankruptcy Code or otherwise. If Landlord draws on the Letter of Credit due to a Renewal Failure or an Issuing Bank Replacement Failure and is holding those proceeds of the Letter of Credit before application due to any other Letter of Credit Draw Event (" Letter of Credit Proceeds ") and has not elected to terminate this Lease due to Tenant's failure to deliver a replacement letter of credit as required under Section 2 above, then Landlord agrees to return to Tenant the Letter of Credit Proceeds, provided that Tenant is not then in Default under this Lease (other than as a result of Tenant's failure to deliver the replacement letter of credit) concurrently with Tenant's delivery to Landlord of a substitute letter of credit in the Letter of Credit Amount that complies in all respects with the requirements of this Lease (including, in the case of a Letter of Credit Issuing Bank Replacement Failure, a substitute Letter of Credit from a different issuer, which issuer shall be acceptable to Landlord in its reasonable discretion). Nothing contained in the immediately preceding sentence shall imply that Landlord waives any right to declare a Tenant Default under this Lease due to Tenant's failure to provide a replacement letter of credit in accordance with Section 2 above following the occurrence of a Renewal Failure or an Issuing Bank Replacement Failure.

4. Landlord may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer all or any portion of its interest in and to the Letter of Credit to another party, person or entity, including Landlord's assignee, successor, transferee or mortgagee and/or to have the Letter of Credit reissued in the name of Landlord's assignee, successor, transferee or mortgagee. If Landlord transfers its interest in the Building and transfers the Letter of Credit (or any proceeds thereof then held by Landlord) in whole or in part to the transferee, Landlord shall, without any further agreement between the parties hereto, thereupon be released by

Tenant from all liability therefor. The provisions hereof shall apply to every transfer or assignment of all or any part of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall execute and submit to the issuer of the Letter of Credit such applications, documents and instruments as may be necessary to effectuate such transfer. Tenant shall be responsible to pay any then-applicable transfer fee in connection with such transfer.

5. Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal of it or any proceeds of it be: (a) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (b) subject to the terms of California Civil Code Section 1950.7, or (c) intended to serve as a "security deposit" within the meaning of California Civil Code Section 1950.7. Landlord and Tenant: (i) further acknowledge and agree that the Letter of Credit is not intended to serve as a security deposit and California Civil Code Section 1950.7 and any and all other laws, rules, and regulations applicable to security deposits in the commercial context (" Security Deposit Laws ") shall have no applicability or relevancy to the Letter of Credit, and (ii) waive any and all rights, duties, and obligations either party may now or in the future have relating to or arising from the Security Deposit Laws.

EXHIBIT " E "

FORM OF TENANT ESTOPPEL CERTIFICATE

TENANT ESTOPPEL CERTIFICATE

This Estoppel Certificate is given to [_____, a _____] (together with any successors and assigns, collectively, " Landlord "), by [_____ a _____] (" Tenant "), with the understanding that Landlord, its current or prospective lenders and their respective counsel will rely on this Certificate in connection with the real property known as [_____], located at [_____] (" Property "). Tenant hereby certifies as follows:

1. The undersigned is Tenant under that certain lease dated _____, ____ (" Lease ") executed by Landlord or its predecessor in interest, as landlord, and Tenant, as tenant.

2. Pursuant to the Lease, Tenant has leased a portion of the Property consisting of approximately _____ leasable square feet (" Premises ").

3. The commencement date of the term of the Lease is _____.

4. The expiration date of the term of the Lease is _____.

5. The annual minimum rent is $_____, payable monthly in advance on the first day of each calendar month.

6. The next rental payment in the amount of $_____ is due on _____, 20__.

7. No rent has been prepaid except for the current month, and Tenant agrees not to pay rent more than one month in advance at any time.

8. The obligation to pay rent began on _____, _____.

9. The annual minimum rent is subject to rental increases as set forth in the Lease, and the last increase covers the period from _____, ____ through _____, _____.

10. Tenant's payment of its share of Operating Expenses is currently based on an annual amount of $_____, which is currently being paid on an estimated basis in advance at the rate of $_____ per month.

11. Tenant's percentage share of real estate taxes is ___%, which is currently being paid to Landlord on an estimated basis in advance at the rate of $___ per month.

12. All rent has been paid through _____, 20__.

13. Tenant has [paid a security deposit of $_____] [delivered a letter of credit to Landlord in the amount of $_____] in connection with the Lease.

14. Tenant does not have any right or option to renew or extend the term of the Lease or to expand into any additional space or to terminate the Lease in whole or in part prior to the expiration of the term except as set forth below in this paragraph.

15. The Lease has been duly executed and delivered by, and is a binding obligation of, Tenant (and Guarantor, if applicable), and the Lease is in full force and effect. The Lease is the entire agreement between Landlord (or any affiliated party) and Tenant (or any affiliated party) pertaining to the Premises. A true, correct and complete copy of the Lease, together with any amendments, modifications and supplements thereto, is attached hereto as Exhibit A , and except as attached hereto, there are no amendments, modifications, supplements, arrangements, side letters or understandings, oral or written, of any sort, modifying, amending, altering, supplementing or changing the terms of the Lease.

16. Tenant has unconditionally accepted the Premises and is satisfied with all the work done by and required of Landlord; Tenant has taken possession and is in occupancy of the Premises and is open for business; rent payments have commenced, and all tenant improvements in the Premises have been completed by Landlord in accordance with plans and specifications approved by Tenant; and as of the date hereof Tenant is not aware of any defect in the Premises.

17. Except as set forth on Exhibit B attached to this Certificate: Landlord has satisfied all commitments made to induce Tenant to enter into the Lease; there are no offsets or credits against rentals payable under the Lease; no free rent, tenant improvements, contributions or other concessions have been granted to Tenant; Landlord is not reimbursing Tenant or paying Tenant's rent obligations under any other lease, and Tenant has not advanced any funds for or on behalf of Landlord for which Tenant has a right of deduction from, or set off against, future rent payments.

18. Except as set forth on Exhibit B attached to this Certificate, Landlord has no obligations to repair or maintain the Premises.

19. All obligations of Landlord under the Lease have been performed, and no event has occurred and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by Landlord under the Lease. There are no offsets or defenses that Tenant has against the full enforcement of the Lease by Landlord.

20. Tenant is not in any respect in default under the Lease and has not assigned, transferred or hypothecated the Lease or any interest therein or subleased all or any portion of the Premises. Tenant (and Guarantor, as applicable) is not insolvent and is able to pay its debts as they mature. Tenant (and Guarantor, as applicable) has not declared bankruptcy or filed a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, Tenant has no present intentions of doing so, and no such proceeding has been commenced against Tenant seeking such relief, and Tenant has no knowledge that any such proceeding is threatened.

21. Tenant does not have any right or option to purchase all or any part of the real property of which the Premises constitute a part.

22. Tenant agrees that no future modifications or amendment of the Lease will be enforceable unless the modification or amendment has been consented to in writing by Landlord.

24. Tenant has no notice of any assignment of the Lease by Landlord, or any assignment, hypothecation or pledge of rents accruing under the Lease by Landlord, except in connection with prior mortgage financing obtained by Landlord.

23. Tenant has received no notice by any governmental authority or person claiming a violation of, or requiring compliance with, any applicable federal, state or local law or regulation intended to protect the environment and public health and safety (" Environmental Law "). The Premises are not, and during the term of the Lease have never been used to handle, treat, store, or dispose of oil, petroleum products, hazardous substances in any quantity, hazardous waste, toxic substances, regulated substances or hazardous air pollutants in violation of any Environmental Law.

24. The person executing this Estoppel Certificate is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

Dated: _____, 20__

TENANT:

By: _____
Name: _____
Title: _____

Exhibits
A – Complete copy of the Lease, together with any amendments
B – Exceptions to certifications (Note: If no exceptions are noted on Exhibit B, then the word "none" shall be deemed to have been inserted therein)

SAMPLE ONLY

NOT FOR EXECUTION

EXHIBIT " F "

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project; provided, however, Landlord agrees to enforce these Rules and Regulations in a nondiscriminatory manner throughout the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, Tenant and in the event of the loss of keys so furnished, Tenant shall pay to Landlord the cost of replacing same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in San Diego County, California. Tenant, its employees and agents must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable to Landlord for all acts of such persons. Landlord and his agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case, except to the extent caused by Landlord's gross negligence or willful misconduct. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility and expense of Tenant.

5. The requirements of Tenant will be attended to only upon application at the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

6. Except as expressly provided otherwise in the Lease, no sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without the prior written consent of Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and the agents of Landlord to prevent same.

7. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused same.

8. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent.

9. Tenant shall provide material safety data sheets for any Hazardous Material used or kept on the Premises.

10. Tenant shall not without the prior written consent of Landlord use any method of heating or air conditioning other than that supplied by Landlord.

11. Tenant shall not permit or allow the Premises to be occupied or used in a manner unreasonably offensive or objectionable to Landlord or other occupants of the Project by reason of unreasonable noise or vibrations, or unreasonably interfere with other tenants or those having business therein, whether by the use of any musical instrument, radio, phonograph, or in any other way. Tenant shall not throw anything out of doors, windows or skylights or down passageways.

12. Tenant shall not bring into or keep within the Project, the Building or the Premises any animals (other than valid service animals), birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.

13. No cooking shall be done or permitted on the Premises, nor shall the Premises be used for the storage of merchandise, for lodging or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors, provided that such use is in accordance with all applicable Laws.

14. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises.

15. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

16. Tenant, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Building Common Areas or Project Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

17. Tenant shall use commercially reasonable efforts to not waste electricity, water or air conditioning provided to the Building Common Areas and shall refrain from attempting to adjust any controls with respect thereto.

18. Tenant shall deposit all of its trash, garbage and Hazardous Materials in receptacles within its Premises or in receptacles designated by Landlord outside of the Premises. Tenant shall not place in any such receptacle any material that cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. Any Hazardous Materials transported through Common Area shall be held in secondary containment devices provided by Tenant. Tenant shall be responsible, at its sole cost and expense, for Tenant's removal of its trash, garbage from the Premises to designated receptacles outside of the Premises and the removal of Hazardous Materials from the

Premises and the Project pursuant to a separate contract maintained by Tenant. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

19. Tenant shall comply with all orders, requirements and conditions now or hereafter imposed by applicable Laws or by Landlord for the Project (to the extent disclosed to Tenant in writing) (collectively, " Waste Regulations ") regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash generated by Tenant (collectively, " Waste Products "), including (without limitation) the separation of Waste Products into receptacles reasonably approved by Landlord and the removal of such receptacles in accordance with any collection schedules prescribed by Waste Regulations.

20. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any Governmental Authority.

21. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the prior written consent of Landlord. Tenant shall be responsible for any damage to the window film on the exterior windows of the Premises and shall promptly repair any such damage at Tenant's sole cost and expense, except to the extent caused by Landlord's gross negligence or willful misconduct. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights. Tenant shall abide by Landlord's regulations concerning the opening and closing of window coverings which are attached to the windows in the Premises, if any, which have a view of any interior portion of the Building, Building Common Areas or Project Common Areas.

22. Tenant must comply with requests by Landlord concerning the informing of their employees of items of importance to Landlord.

23. Tenant must comply with any applicable " **NO-SMOKING** " ordinances. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building.

24. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties (except for the gross negligence or willful misconduct of Landlord), including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant may, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by Law.

25. Tenant shall not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.

26. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

27. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

28. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked and properly operational fire extinguisher next to any duplicating or photocopying machines or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations on a nondiscriminatory basis, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be reasonably necessary for the management, safety, care and cleanliness of the Premises, Building, the Building Common Areas and the Project Common Areas, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Provided that the Rules and Regulations are applied and enforced in a non-discriminatory manner, Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT " G "

PARKING RULES AND REGULATIONS

The following rules and regulations shall govern the use of the Parking Area of the Project:

1. Except for the gross negligence or willful misconduct of Landlord, Landlord shall not be responsible for any damage to vehicles, injuries to persons, or loss of property, all of which risks are assumed by the party using the Parking Area. All claimed damage, injuries, or loss must be reported, itemized in writing and delivered to the parking management office located within the Project within ten (10) days after any claimed damage, injuries, or loss occurs. Any claim not so made is waived. In any event, except to the extent of Landlord's gross negligence or willful misconduct, (a) the total liability of Landlord, if any, shall be limited to Two Hundred Fifty Dollars ($250.00) for all damages to any vehicle and/or loss of any property per occurrence, and (b) Landlord shall not be responsible for the loss of use of any vehicle or property.

2. Tenant shall not park, nor permit Tenant's Parking Invitees except visitors to park, in any parking areas designated by Landlord as areas for parking by visitors to the Project; nor shall Tenant and/or Tenant's Parking Invitees park in parking areas designated by Landlord for the exclusive use of other tenants or other occupants of the Project. Neither Tenant, nor Tenant's Parking Invitees, shall leave vehicles in the parking areas overnight (except in connection with Tenant's employees who are working at the Premises overnight or in connection with business travel by Tenant's employees for periods not to exceed five (5) consecutive days in each instance) or as extended term storage or park any vehicles in the parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles or four wheeled trucks.

3. Parking stickers or any other device or form of identification supplied by Landlord as a condition of use of the Parking Area shall remain the property of Landlord. Such parking identification device must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable and any device in the possession of an unauthorized holder will be void. Landlord may charge a reasonable fee for parking stickers, cards or other parking control device supplied by Landlord.

4. Vehicles must be parked entirely within painted stall lines of a single parking stall.

5. All directional signs and arrows must be observed.

6. The speed limit within all parking areas shall be five (5) miles per hour.

7. Parking is prohibited:

(a) in areas not striped for parking;

(b) in aisles;

(c) where "no parking" signs are posted;

(d) on ramps;

(e) in cross-hatched areas;

(f) in loading areas; and

(g) in such other areas as may be designated by Landlord or Landlord parking operator.

8. Every parker shall be responsible for parking and locking his own vehicle.

9. Loss or theft of parking identification devices must be reported to Landlord immediately, and a lost or stolen report must be filed by Tenant or user of such parking identification device at the time. Landlord has the right to exclude any car from the Parking Area that does not have an applicable identification device.

10. Any parking identification devices reported lost or stolen found on any unauthorized car will be confiscated and the illegal holder will be subject to prosecution.

11. Washing, waxing, cleaning or servicing of any vehicle in any area not specifically reserved for such purpose is prohibited.

12. The parking operators, managers or attendants are not authorized to make or allow any exceptions to these rules and regulations.

13. Tenant's and Tenant's Parking Invitees' continued right to use any parking spaces in the Parking Area is conditioned upon Tenant abiding by, and using commercially reasonable efforts to cause Tenant's Parking Invitees to abide by, these rules and regulations and those contained in this Lease. Further, if this Lease terminates for any reason whatsoever, Tenant's, and Tenant's Parking Invitees', right to use the parking spaces in the Parking Area shall terminate concurrently therewith.

14. Tenant agrees to sign a parking agreement with Landlord or Landlord's parking operator within five (5) days of request, which agreement shall provide the manner of payment of monthly parking fees, if any, and otherwise be consistent with this Lease and these rules and regulations.

15. Landlord reserves the right to refuse the sale of monthly stickers or other parking identification devices to any tenant or person and/or his agents or representatives who willfully refuse to comply with these rules and regulations or any posted or unposted Laws.

16. Landlord reserves the right to establish and change parking fees (except to the extent that same are specifically fixed pursuant to Section 1.8) and to modify and/or adopt such other reasonable and nondiscriminatory rules and regulations for the Parking Area as it deems necessary for the operation of the Parking Area. Nothing herein shall require Landlord to charge a uniform monthly parking fee for the use of vehicle parking spaces in the Project, it being expressly acknowledged and agreed that parking fees may differ based on any factor deemed sufficient by Landlord, including without limitation the degree of a particular tenant's participation in energy and/or traffic management programs of the type described in Section 8.2(a) of this Lease. Landlord may refuse to permit any person who violates these rules to park in the Parking Area, and any violation of the rules shall subject the car to removal, at such car owner's expense.

17. A third party may own, operate or control the Parking Area, and such party may enforce these Parking Rules and Regulations relating to parking. Tenant will obey any additional rules and regulations governing parking that may be imposed by the parking operator or any other person controlling the Parking Area serving the Project.

18. Tenant will be responsible for the observance of all of the Parking Rules and Regulations by Tenant (including, without limitation, all employees, agents, clients, customers, invitees and guests).

19. Landlord may, from time to time, waive any one or more of these Parking Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a continuing waiver of such Parking Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from thereafter enforcing any such Parking Rules and Regulations against Tenant or any or all of the tenants of the Project.

20. These Parking Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the other terms, covenants, agreements, and conditions of this Lease. To the extent there is any conflict between any of the Parking Rule and Regulations and any express term or provision otherwise set forth in this Lease, such other express term or provision will be controlling.

EXHIBIT " H "

PHASE I ENVIRONMENTAL SITE ASSESSMENT

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Commercial Building
6262 Lusk Boulevard
San Diego, California 92121
Project No. 16004140

ISSUE	ENVIRONMENTAL CONDITION IDENTIFIED					ASSESSMENT				
	NONE	REC	CREC	HREC	*de mini mis*	ACCEPTABLE	O&M	PHASE 2	PHASE 3	COST
Historic Use	X					X				
UST\AST	X					X				
Chemical Use, Storage or Disposal	X					X				
Waste Storage or Disposal	X					X				
PCBs	X					X				
Environmental Records Review	X					X				
REC on Adjoining Property	X					X				
Stains or Odors	X					X				
Solid Waste or Fill	X					X				
Septic Fields, Wells or Drywells	X					X				
Pits, Ponds, Lagoons	X					X				
Vapor Encroachment	X					X				
NON-SCOPE CONSIDERATIONS										
Asbestos	X					X				
Lead Based Paint	X					X				
Lead in Water	X					X				
Mold	X					X				
Wetlands	X					X				
Radon	X					X				

INDEX OF DEFINED TERMS

EXHIBIT 10.42

FIRST AMENDMENT TO THE
CYTORI THERAPEUTICS, INC.
2015 NEW EMPLOYEE INCENTIVE PLAN

This First Amendment (this " ***Amendment*** ") to the Cytori Therapeutics, Inc. 2015 New Employee Incentive Plan (as amended and/or restated to date, the " ***Plan*** ") is made and adopted by Cytori Therapeutics, Inc. (the " ***Corporation*** "), a corporation organized under the laws of State of Delaware.

1. Section 4.1 of the Plan is hereby amended to read as follows:

4.1 Maximum Number of Shares Issuable. Subject to adjustment as provided in Sections 4.2 and 4.3, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to Awards shall be equal to Three Hundred Sixteen Thousand Six Hundred Sixty-Six (316,666) shares and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.

2. This Amendment is effective as of January 26, 2017.

3. This Amendment shall be and is hereby incorporated in and forms a part of the Plan. All other terms and provisions of the Plan shall remain unchanged except as specifically modified herein. The Plan, as amended by this Amendment, is hereby ratified and confirmed.

* * * * * * * *

I hereby certify that the foregoing Amendment was duly adopted by the Board of Directors of the Corporation on January 26, 2017.

CYTORI THERAPEUTICS , INC.

By: /s/ Jeremy Hayden
Name: Jeremy Hayden
Its: General Counsel & VP Business Development

US-DOCS\79718530.3

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Cytori Therapeutics, Inc.
San Diego, California

We hereby consent to the incorporation by reference in the Registration Statements on Form S-1 (No. 333-215365), Form S-3 (Nos. 333-153233, 333-159912, 333-192409, 333-200090, and 333-195846) and Form S-8 (Nos. 333-210211, 333-202858, 333-181764, 333-82074, and 333-122691) of Cytori Therapeutics, Inc. (the "Company") of our report dated March 24, 2017, relating to the 2016 consolidated financial statements and financial statement schedule, which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP

San Diego, California
March 24, 2017

EXHIBIT 23.2

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Cytori Therapeutics, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-210211, 333-181764, 333-82074, 333-122691, and 333-202858) on Form S-8, (Nos. 333-153233, 333-159912, 333-192409, 333-200090, and 333-195846) on Form S-3, and (No. 333-215365) on Form S-1 of Cytori Therapeutics, Inc. of our reports dated March 11, 2016, with respect to the consolidated balance sheet of Cytori Therapeutics, Inc. and subsidiaries as of December 31, 2015, and the related consolidated statements of operations and comprehensive loss, stockholders' equity, and cash flows for the year ended December 31, 2015, and the accompanying schedule of valuation and qualifying accounts of Cytori Therapeutics, Inc. and subsidiaries as of and for the year ended December 31, 2015, and to the reference to our firm in Item 6, Selected Financial Data, which reports and reference to our firm appears in the December 31, 2016 annual report on Form 10-K of Cytori Therapeutics, Inc.

Our report dated March 11, 2016 contains an explanatory paragraph that states that the Company's recurring losses from operations and liquidity position raises substantial doubt about its ability to continue as a going concern. The consolidated financial statements and financial statement schedule do not include any adjustments that might result from the outcome of that uncertainty.

/s/ KPMG LLP

San Diego, California
March 24, 2017

EXHIBIT 31.1

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, Marc H. Hedrick, certify that:

1. I have reviewed this Annual Report on Form 10-K 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(s) 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(s) 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: March 24, 2017
/s/ Marc H. Hedrick, MD
Marc. H. Hedrick,
President & Chief Executive Officer

EXHIBIT 31.2

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, Tiago M. Girão, certify that:

1. I have reviewed this Annual Report on Form 10-K 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(s) 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(s) 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: March 24, 2017
/s/ Tiago M. Girão
Tiago M. Girão,
VP of Finance and Chief Financial Officer

EXHIBIT 32.1

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

In connection with the Annual Report on Form 10-K of Cytori Therapeutics, Inc. for the year ended December 31, 2016 as filed with the Securities and Exchange Commission on March 24, 2017, (the "Report"), Marc H. Hedrick, as President & Chief Executive Officer of Cytori Therapeutics, Inc., and Tiago Girão, as VP of Finance and Chief Financial Officer of Cytori Therapeutics, Inc., each hereby certifies, respectively, that:

1. The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934.

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Cytori Therapeutics, Inc.

By: /s/ Marc H. Hedrick, MD

Dated: March 24, 2017

Marc H. Hedrick, MD
President & Chief Executive Officer

By: /s/ Tiago M. Girão

Dated: March 24, 2017

Tiago M. Girão
VP of Finance and Chief Financial Officer