

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**AMENDMENT NO. 1**

**TO**

**FORM S-1**

**REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

**CYTORI THERAPEUTICS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**3841**

(Primary Standard Industrial Classification Code Number)

**33-0827593**

(I.R.S. Employer Identification Number)

**3020 Callan Road  
San Diego, CA 92121  
(858) 458-0900**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Marc H. Hedrick, MD  
President and Chief Executive Officer  
Cytori Therapeutics, Inc.  
3020 Callan Road  
San Diego, CA 92121  
(858) 458-0900**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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 the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for comply with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

### CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed Maximum Aggregate Offering Price (1)	Amount of registration fee
Units consisting of shares of Series B Preferred Stock, par value \$0.001 per share, and warrants to purchase shares of Common Stock, par value \$0.001 per share	\$10,000,000	\$1,245
Non-transferable Rights to purchase Units (2)	—	—
Series B Preferred Stock included as part of the Units	Included with Units above	—
Warrants to purchase shares of Common Stock included as part of the Units (3)	Included with Units above	—
Common Stock issuable upon conversion of the Series B Preferred Stock (4)(5)	—	—
Common Stock issuable upon exercise of the Warrants (5)	\$6,000,000	\$747
Total	\$16,000,000	\$1,992 (6)

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended (the “Act”).

(2) Non-transferable Rights to purchase Units are being issued without consideration. Pursuant to Rule 457(g) under the Act, no separate registration fee is required for the Rights because the Rights are being registered in the same registration statement as the securities of the Registrant underlying the Rights.

(3) Pursuant to Rule 457(g) of the Act, no separate registration fee is required for the Warrants because the Warrants are being registered in the same registration statement as the Common Stock of the Registrant issuable upon exercise of the Warrants.

- (4) Pursuant to Rule 457(i) of the Act, no separate registration fee is required for the Common Stock issuable upon conversion of the Series B Preferred Stock because no additional consideration will be received in connection with the exercise of the conversion privilege.
- (5) In addition to the shares of Common Stock set forth in this table, pursuant to Rule 416 under the Act, this registration statement also registers such indeterminate number of shares of Common Stock as may become issuable upon conversion or exercise of these securities as the same may be adjusted as a result of stock splits, stock dividends, recapitalizations or other similar transactions.
- (6) Of this amount, \$1,275 was previously paid.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

DATED OCTOBER 2, 2017



Subscription Rights to Purchase Up to 10,000 Units  
Consisting of an Aggregate of Up to 10,000 Shares of Series B Preferred Stock  
and Warrants to Purchase Up to 12,500,000 Shares of Common Stock  
at a Subscription Price of \$1,000 Per Unit

We are distributing to holders of our common stock, at no charge, non-transferable subscription rights to purchase units. Each unit, which we refer to as a Unit, consists of one share of Series B Preferred Stock and 1,250 warrants, which we refer to as the Warrants. Each Warrant will be exercisable for one share of our common stock. We refer to the offering that is the subject of this prospectus as the Rights Offering. In the Rights Offering, you will receive one subscription right for every share of common stock owned at 5:00 p.m., Eastern Time, on October 27, 2017, the record date of the Rights Offering, or the Record Date. The Series B Preferred Stock and the Warrants comprising the Units will separate upon the closing of the Rights Offering and will be issued separately but may only be purchased as a Unit, and the Units will not trade as a separate security. The subscription rights will not be tradable.

Each subscription right will entitle you to purchase one Unit, which we refer to as the Basic Subscription Right, at a subscription price per Unit of \$1,000, which we refer to as the Subscription Price. Each Warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.48 per share from the date of issuance through its expiration 30 months from the date of issuance. If you exercise your Basic Subscription Rights in full, and any portion of the Units remain available under the Rights Offering, you will be entitled to an over-subscription privilege to purchase a portion of the unsubscribed Units at the Subscription Price, subject to proration and ownership limitations, which we refer to as the Over-Subscription Privilege. Each subscription right consists of a Basic Subscription Right and an Over-Subscription Privilege, which we refer to as the Subscription Right.

The Subscription Rights will expire if they are not exercised by 5:00 p.m., Eastern Time, on November 21, 2017, unless the Rights Offering is extended or earlier terminated by the Company. If we elect to extend the Rights Offering, we will issue a press release announcing the extension no later than 9:00 a.m., Eastern Time, on the next business day after the most recently announced expiration date of the Rights Offering. We may extend the Rights Offering for additional periods in our sole discretion. Once made, all exercises of Subscription Rights are irrevocable.

We have not entered into any standby purchase agreement or other similar arrangement in connection with the Rights Offering. The Rights Offering is being conducted on a best-efforts basis and there is no minimum amount of proceeds necessary to be received in order for us to close the Rights Offering.

We have engaged Maxim Group LLC to act as dealer-manager in the Rights Offering.

**Investing in our securities involves a high degree of risk. See the section entitled “Risk Factors” beginning on page 19 of this prospectus. You should carefully consider these risk factors, as well as the information contained in this prospectus, before you invest.**

Broadridge Corporate Issuer Solutions, Inc. will serve as the Subscription and Information Agent for the Rights Offering. The Subscription Agent will hold the funds we receive from subscribers until we complete, abandon or terminate the Rights Offering. If you want to participate in this Rights Offering and you are the record holder of your shares, we recommend that you submit your subscription documents to the Subscription Agent well before the deadline. If you want to participate in this Rights Offering and you hold shares through your broker, dealer, bank or other nominee, you should promptly contact your broker, dealer, bank or other nominee and submit your subscription documents in accordance with the instructions and within the time period provided by your broker, dealer, bank or other nominee. For a detailed discussion, see “The Rights Offering – The Subscription Rights.”

Our board of directors reserves the right to terminate the Rights Offering for any reason any time before the closing of the Rights Offering. If we terminate the Rights Offering, all subscription payments received will be returned within 10 business days, without interest or deduction. We expect the Rights Offering to expire on or about November 21, 2017, subject to our right to extend the Rights Offering as described above, and that we would close on subscriptions within five business days of such date.

Our common stock is listed on the NASDAQ Capital Market, or NASDAQ, under the symbol “CYTX.” On September 29, 2017, the last reported sale price of our common stock was \$0.37 per share. There is no established public trading market for the Series B Preferred Stock or the Warrants. We do not intend to apply for listing of the Series B Preferred Stock on any securities exchange or recognized trading system. We intend to apply to list the Warrants on NASDAQ following their issuance. The Subscription Rights are non-transferrable and will not be listed for trading on NASDAQ or any other securities exchange or market. You are urged to obtain a current price quote for our common stock before exercising your Subscription Rights.

	<b>Per Unit</b>	<b>Total<sup>(2)</sup></b>
Subscription price	\$ 1,000.00	\$ 10,000,000
Dealer-Manager fees and expenses <sup>(1)</sup>	\$ 77.50	\$ 775,000
Proceeds to us, before expenses	\$ 922.50	\$ 9,225,000

(1) In connection with this Rights Offering, we have agreed to pay to Maxim Group LLC as the dealer-manager a cash fee equal to (i) 6% of the gross proceeds received by us directly from exercises of the Subscription Rights if the amount of such gross proceeds is less than \$7.5 million or (b) 7% of the gross proceeds received by us directly from exercises of the Subscription Rights if the amount of such gross proceeds is at least \$7.5 million. We have also agreed to reimburse the dealer-manager for its expenses up to \$75,000. See “Plan of Distribution.”

(2) Assumes the Rights Offering is fully subscribed, but excludes proceeds from the exercise of Warrants included within the Units.

**Our board of directors is making no recommendation regarding your exercise of the Subscription Rights. You should carefully consider whether to exercise your Subscription Rights before the expiration date. You may not revoke or revise any exercises of Subscription Rights once made.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

*Dealer-Manager*

**Maxim Group LLC**

The date of this Prospectus is \_\_\_\_\_, 2017

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## ABOUT THIS PROSPECTUS

The registration statement of which this prospectus forms a part that we have filed with the Securities and Exchange Commission, or SEC, includes exhibits that provide more detail of the matters discussed in this prospectus. You should read this prospectus and the related exhibits filed with the SEC, together with the additional information described under the headings “Where You Can Find More Information” and “Incorporation by Reference” before making your investment decision.

You should rely only on the information provided in this prospectus or in a prospectus supplement or any free writing prospectuses or amendments thereto. We have not authorized anyone else to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information in this prospectus is accurate only as of the date hereof. Our business, financial condition, results of operations and prospects may have changed since that date.

We are not offering to sell or seeking offers to purchase these securities in any jurisdiction where the offer or sale is not permitted. We and the dealer-manager have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the securities as to distribution of the prospectus outside of the United States.

Unless the context otherwise requires, references in this prospectus to “Cytori,” “the Company,” “we,” “us” and “our” refer to Cytori Therapeutics, Inc. and our subsidiaries. Solely for convenience, trademarks and tradenames referred to in this prospectus 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, or that the applicable owner will not assert its rights, to these trademarks and tradenames.

Unless the context otherwise requires, references in this prospectus to shares of our common stock, including prices per share of our common stock, reflect the one-for-15 reverse split that was approved by our stockholders and board of directors on May 10, 2016. Our common stock commenced trading on a split-adjusted basis on May 12, 2016.

## LETTER FROM OUR CHIEF EXECUTIVE OFFICER

Dear Stockholders,

We here at Cytori remain fully committed to our mission of bringing our innovative technologies to patients who need them. To achieve this, our next steps are clear.

First, we will discuss the recent results from our STAR trial for scleroderma with the U.S. FDA and regulatory bodies in Japan and the EU, to determine the next steps for our Habeo™ product. Based on the safety of Habeo™ in the STAR trial and its performance in the more severe, diffuse cutaneous scleroderma subset of patients, we believe this technology has the potential to become a significant therapeutic agent in this clinical setting. We plan on making it available to patients as soon as possible pending definitive clinical trials demonstrate its efficacy in this subset of scleroderma patients.

Second, we intend to drive growth and expansion for Cytori Cell Therapy™ in Japan where we have regulatory approvals and multiple quarters of consumable utilization growth and an enrolling phase III trial for Stress urinary incontinence, called ADRESU. In Europe, where we have a new partner for our managed access program, full STAR data set and an enrolling scleroderma trial, called SCLERADEC-II, we will seek to expand the opportunities for the ethical access to Habeo for this large market.

Finally, we intend to produce our liposomal doxorubicin product, called ATI-0918, for European commercialization through a partner. We anticipate manufacturing verification batches at scale later this year and filing for EMEA approval mid next year.

Thank you for your continued support of the company and confidence in our technology and team.

Sincerely,



Dr. Marc H. Hedrick  
President & CEO



## QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING

*The following are examples of what we anticipate will be common questions about this Rights Offering. The answers are based on selected information included elsewhere in this prospectus. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about the Rights Offering. This prospectus and the documents incorporated by reference into this prospectus contain more detailed descriptions of the terms and conditions of the Rights Offering and provides additional information about us and our business, including potential risks related to the Rights Offering, the Units offered hereby, and our business. We urge you to read this entire prospectus and the documents incorporated by reference into this prospectus.*

### **Why are we conducting the Rights Offering?**

We are conducting the Rights Offering to raise additional capital for research and development, including the development of our current pipeline, for further development of our Celution System products and other related research and development, for general corporate purposes, primarily sales and marketing initiatives relating to our potential commercialization of our Habeo scleroderma therapy and our ATI-0918 in Europe, and for general administrative expenses, working capital and capital expenditures.

### **What is the Rights Offering?**

We are distributing, at no charge, to record holders of our common stock, non-transferable Subscription Rights to purchase Units at a price of \$1,000 per Unit. The Subscription Rights will not be tradable. Each Unit consists of one share of Series B Preferred Stock and 1,250 Warrants. Each share of Series B Preferred Stock is convertible into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series B Preferred Stock by a conversion price of \$0.40 per share, subject to adjustment and subject to, if required, stockholder approval of an amendment of our certification of incorporation to increase our authorized shares of common stock, which we refer to as the Stockholder Approval, as described in more detail herein. See "Are there risks in exercising my Subscription Rights?" below. Each Warrant will be exercisable for one share of our common stock, subject to obtaining Stockholder Approval. Upon closing of the Rights Offering, the Series B Preferred Stock and Warrants will immediately separate. We intend to apply to list the Warrants on NASDAQ. You will receive one Subscription Right for every share of common stock that you owned as of 5:00 p.m., Eastern Time, on the Record Date. Each Subscription Right entitles the record holder to a Basic Subscription Right and an Over-Subscription Privilege. The Subscription Rights will expire if they are not exercised by 5:00 p.m., Eastern Time, on November 21, 2017, unless we extend or earlier terminate the Rights Offering.

### **What are the Basic Subscription Rights?**

For every share you owned as of the Record Date, you will receive one Basic Subscription Right, which gives you the opportunity to purchase one Unit, consisting of one share of our Series B Preferred Stock and 1,250 Warrants, for a price of \$1,000 per Unit. For example, if you owned 100 shares of common stock as of the Record Date, you will receive 100 Subscription Rights and will have the right to purchase 100 shares of our Series B Preferred Stock and Warrants to purchase 125,000 shares of our common stock for \$1,000 per Unit (or a total payment of \$100,000). You may exercise all or a portion of your Basic Subscription Rights or you may choose not to exercise any Basic Subscription Rights at all.

If you are a record holder of our common stock, the number of shares you may purchase pursuant to your Basic Subscription Rights is indicated on the enclosed Rights Certificate. If you hold your shares in the name of a broker, dealer, bank or other nominee who uses the services of the Depository Trust Company, or DTC, you will not receive a Rights Certificate. Instead, DTC will issue one Subscription Right to your nominee record holder for each share of our common stock that you beneficially own as of the Record Date. If you are not contacted by your nominee, you should contact your nominee as soon as possible.

## **What is the Over-Subscription Privilege?**

If you exercise your Basic Subscription Rights in full, you may also choose to exercise your Over-Subscription Privilege to purchase a portion of any Units that remain available under the Rights Offering. You should indicate on your Rights Certificate, or the form provided by your nominee if your shares are held in the name of a nominee, how many additional Units you would like to purchase pursuant to your Over-Subscription Privilege, which we refer to as your Over-Subscription Request.

Subject to stock ownership limitations, if sufficient Units are available, we will seek to honor your Over-Subscription Request in full. If Over-Subscription Requests exceed the number of Units available, however, we will allocate the available Units pro-rata among the record holders exercising the Over-Subscription Privilege in proportion to the number of shares of our common stock each of those record holders owned on the Record Date, relative to the number of shares owned on the Record Date by all record holders exercising the Over-Subscription Privilege. If this pro-rata allocation results in any record holders receiving a greater number of Units than the record holder subscribed for pursuant to the exercise of the Over-Subscription Privilege, then such record holder will be allocated only that number of Units for which the record holder oversubscribed, and the remaining Units will be allocated among all other record holders exercising the Over-Subscription Privilege on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated. See “The Rights Offering—Limitation on the Purchase of Units” for a description of certain stock ownership limitations.

To properly exercise your Over-Subscription Privilege, you must deliver to the Subscription Agent the subscription payment related to your Over-Subscription Privilege before the Rights Offering expires. See “The Rights Offering—The Subscription Rights—Over-Subscription Privilege.” To the extent you properly exercise your Over-Subscription Privilege for an amount of Units that exceeds the number of unsubscribed Units available to you, any excess subscription payments will be returned to you within 10 business days after the expiration of the Rights Offering, without interest or deduction.

Broadridge Corporate Issuer Solutions, Inc., our Subscription Agent for the Rights Offering, will determine the allocation of Over-Subscription Requests based on the formula described above.

## **May the Subscription Rights that I exercise be reduced for any reason?**

Yes. While we are distributing to holders of our common stock one Subscription Right for every share of common stock owned on the Record Date, we are only seeking to raise \$10.0 million dollars in gross proceeds in this Rights Offering. As a result, based on 33,328,401 shares of common stock outstanding as of June 30, 2017, we would grant Subscription Rights to acquire 33,328,401 Units but will only accept subscriptions for 10,000 Units. Accordingly, sufficient Units may not be available to honor your subscription in full. If exercises of Basic Subscription Rights exceed the number of Units available in the Rights Offering, we will allocate the available Units pro-rata among the record holders exercising the Basic Subscription Rights in proportion to the number of shares of our common stock each of those record holders owned on the Record Date, relative to the number of shares owned on the Record Date by all record holders exercising the Basic Subscription Right. If this pro-rata allocation results in any record holders receiving a greater number of Units than the record holder subscribed for pursuant to the exercise of the Basic Subscription Rights, then such record holder will be allocated only that number of Units for which the record holder subscribed, and the remaining Units will be allocated among all other record holders exercising their Basic Subscription Rights on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated. Please also see the discussion under “The Rights Offering—The Subscription Rights—Over-Subscription Privilege” and “The Rights Offering—Limitation on the Purchase of Units” for a description potential proration as to the Over-Subscription Privilege and certain stock ownership limitations.

If for any reason the amount of Units allocated to you is less than you have subscribed for, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.

### **What are the terms of the Series B Preferred Stock?**

Each share of Series B Preferred Stock will be convertible at our option or the option of the holder at any time, and automatically upon receipt of Stockholder Approval, into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series B Preferred Stock by a conversion price of \$0.40 per share, subject to adjustment; provided that, until we obtain the Stockholder Approval, if the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering is greater than 30,000,000, each holder will only be able to convert that number of shares of Series B Preferred Stock obtained by multiplying the shares of Series B Preferred Stock issued to such holder in this offering by (i) 30,000,000 divided by (ii) the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering (rounded down to the nearest whole share). The Series B Preferred Stock has certain conversion rights, dividend rights and liquidation preferences as described in more detail herein. The Series B Preferred Stock will not be listed on NASDAQ.

### **What are the terms of the Warrants?**

Each Warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.48 per share from the date of Stockholder Approval through its expiration 30 months from the date of issuance. The Warrants will be exercisable for cash, or, solely during any period when a registration statement for the exercise of the Warrants is not in effect, on a cashless basis. We may redeem the Warrants for \$0.01 per Warrant if our common stock closes above \$1.20 per share for ten consecutive trading days, provided that we may not do so prior to the first anniversary of closing of the Rights Offering.

### **Are the Warrants listed?**

We intend to apply to list the Warrants on NASDAQ, although there is no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet the minimum listing criteria to be accepted for listing on NASDAQ.

The Warrants will be issued in registered form under a warrant agent agreement with Broadridge Corporate Issuer Solutions, Inc. as warrant agent.

### **What are the requirements to list the Warrants on NASDAQ?**

To satisfy the initial listing requirement for Warrants on NASDAQ, we must (i) issue at least 400,000 Warrants, (ii) maintain the listing of the common stock underlying the Warrants on NASDAQ, (iii) have at least three registered and active market makers, and (iv) have at least 400 round lot holders of the Warrants (meaning a holder of at least 100 warrants).

### **Will fractional shares be issued upon exercise of Subscription Rights, upon the conversion of Series B Preferred Stock or upon the exercise of Warrants?**

No. We will not issue fractional shares of common stock in the Rights Offering. We will only distribute Subscription Rights to acquire whole Units, and rights holders will only be entitled to purchase a number of Units representing a whole number of shares and Warrants, rounded down to the nearest whole number of shares or

Warrants, as applicable, a holder would otherwise be entitled to purchase. Any excess subscription payments received by the Subscription Agent will be returned within 10 business days after expiration of the Rights Offering, without interest or deduction. No fractional shares shall be issued upon the conversion of the Series B Preferred Stock or upon the exercise of Warrants.

### **What effect will the Rights Offering have on our outstanding common stock?**

Assuming no other transactions by us involving our capital stock prior to the expiration of the Rights Offering, and if the Rights Offering is fully subscribed, upon consummation of the Rights Offering we will have 33,328,401 shares of common stock issued and outstanding, 10,000 shares of Series B Preferred Stock issued and outstanding, and Warrants to purchase an additional 12,500,000 shares of our common stock issued and outstanding, based on 33,328,401 shares of our common stock outstanding as of June 30, 2017. The exact number of shares of Series B Preferred Stock and Warrants that we will issue in this offering will depend on the number of Units that are subscribed for in the Rights Offering.

### **How was the Subscription Price determined?**

In determining the Subscription Price, the directors considered, among other things, the following factors:

- the current and historical trading prices of our common stock;
- the price at which stockholders might be willing to participate in the Rights Offering;
- the value of the Series B Preferred Stock being issued as a component of the Unit;
- the value of the Warrant being issued as a component of the Unit;
- our need for additional capital and liquidity;
- the cost of capital from other sources; and
- comparable precedent transactions, including the percentage of shares offered, the terms of the subscription rights being offered, the subscription price and the discount that the subscription price represented to the immediately prevailing closing prices for those offerings.

In conjunction with the review of these factors, the board of directors also reviewed our history and prospects, including our past and present earnings and cash requirements, our prospects for the future, the outlook for our industry and our current financial condition. The board of directors also believed that the Subscription Price should be designed to provide an incentive to our current stockholders to participate in the Rights Offering and exercise their Basic Subscription Right and their Over-Subscription Privilege.

The Subscription Price does not necessarily bear any relationship to any established criteria for value. You should not consider the Subscription Price as an indication of actual value of our company or our common stock. The market price of our common stock may decline during or after the Rights Offering. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. You should obtain a current price quote for our common stock and perform an independent assessment of our Series B Preferred Stock and Warrants before exercising your Subscription Rights and make your own assessment of our business and financial condition, our prospects for the future, the terms of the Rights Offering, the information in this prospectus and the other considerations relevant to your circumstances. Once made, all exercises of Subscription Rights are irrevocable. In addition, there is no established trading market for the Warrants to be issued pursuant to this offering, and the Warrants may not be widely distributed. We intend to

apply to list the Warrants for trading on NASDAQ, but there can be no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet minimum listing criteria to be accepted for listing on NASDAQ or that a market will develop for the Warrants.

**Am I required to exercise all of the Basic Subscription Rights I receive in the Rights Offering?**

No. You may exercise any number of your Basic Subscription Rights, or you may choose not to exercise any Basic Subscription Rights. If you do not exercise any Basic Subscription Rights, the number of shares of our common stock you own will not change. However, if you choose to not exercise your Basic Subscription Rights in full and other holders of Subscription Rights do exercise, your proportionate ownership interest in our company will decrease. If you do not exercise your Basic Subscription Rights in full, you will not be entitled to exercise your Over-Subscription Privilege.

**How soon must I act to exercise my Subscription Rights?**

If you received a Rights Certificate and elect to exercise any or all of your Subscription Rights, the Subscription Agent must receive your completed and signed Rights Certificate and payment for both your Basic Subscription Rights and any Over-Subscription Privilege you elect to exercise before the Rights Offering expires on November 21, 2017, at 5:00 p.m., Eastern Time, unless we extend or earlier terminate the Rights Offering. If you hold your shares in the name of a broker, dealer, bank or other nominee, your nominee may establish a deadline before the expiration of the Rights Offering by which you must provide it with your instructions to exercise your Subscription Rights, along with the required subscription payment.

**May I transfer my Subscription Rights?**

No. The Subscription Rights may be exercised only by the stockholders to whom they are distributed, and they may not be sold, transferred, assigned or given away to anyone else, other than by operation of law. As a result, Rights Certificates may be completed only by the stockholder who receives the certificate. We do not intend to apply for the listing of the Subscription Rights on any securities exchange or recognized trading market.

**Will our directors and executive officers participate in the Rights Offering?**

To the extent they hold common stock as of the Record Date, our directors and executive officers will be entitled to participate in the Rights Offering on the same terms and conditions applicable to other Rights holders. While none of our directors or executive officers has entered into any binding commitment or agreement to exercise Subscription Rights received in the Rights Offering, all of our directors and executive officers have indicated an interest in participating in the offering.

**Has the board of directors made a recommendation to stockholders regarding the Rights Offering?**

No. Our board of directors is making no recommendation regarding your exercise of the Subscription Rights. Rights holders who exercise Subscription Rights will incur investment risk on new money invested. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. We cannot predict the price at which our shares of common stock and, if listed, the Warrants will trade after the Rights Offering. On September 29, 2017, the last reported sale price of our common stock on NASDAQ was \$0.37 per share. You should make your decision based on your assessment of our business and financial condition, our prospects for the future, the terms of the Rights Offering, the information contained in this prospectus and other considerations relevant to your circumstances. See "Risk Factors" for discussion of some of the risks involved in investing in our securities.

## **How do I exercise my Subscription Rights?**

If you are a stockholder of record (meaning you hold your shares of our common stock in your name and not through a broker, dealer, bank or other nominee) and you wish to participate in the Rights Offering, you must deliver a properly completed and signed Rights Certificate, together with payment of the Subscription Price for both your Basic Subscription Rights and any Over-Subscription Privilege you elect to exercise, to the Subscription Agent before 5:00 p.m., Eastern Time, on November 21, 2017. If you are exercising your Subscription Rights through your broker, dealer, bank or other nominee, you should promptly contact your broker, dealer, bank or other nominee and submit your subscription documents and payment for the Units subscribed for in accordance with the instructions and within the time period provided by your broker, dealer, bank or other nominee.

## **What if my shares or warrants are held in “street name”?**

If you hold your shares of our common stock in the name of a broker, dealer, bank or other nominee, then your broker, dealer, bank or other nominee is the record holder of the shares you beneficially own. The record holder must exercise the Subscription Rights on your behalf. Therefore, you will need to have your record holder act for you.

If you wish to participate in this Rights Offering and purchase Units, please promptly contact the record holder of your shares. We will ask the record holder of your shares, who may be your broker, dealer, bank or other nominee, to notify you of this Rights Offering.

## **What form of payment is required?**

You must timely pay the full Subscription Price for the full number of Units you wish to acquire pursuant to the exercise of Subscription Rights by delivering to the Subscription Agent a:

- personal check drawn on a U.S. bank;
- certified check drawn on a U.S. bank;
- U.S. Postal money order; or
- wire transfer.

If you send payment by personal uncertified check, payment will not be deemed to have been delivered to the Subscription Agent until the check has cleared. As such, any payments made by personal check should be delivered to the Subscription Agent no fewer than three business days prior to the expiration date.

If you send a payment that is insufficient to purchase the number of Units you requested, or if the number of Units you requested is not specified in the forms, the payment received will be applied to exercise your Subscription Rights to the fullest extent possible based on the amount of the payment received.

## **When will I receive my new shares of Series B Preferred Stock and Warrants?**

As soon as practicable after the expiration of the Rights Offering, and within five business days thereof, we expect to close on subscriptions and for the Subscription Agent to arrange for the issuance of the shares of Series B Preferred Stock and Warrants purchased in the Rights Offering. At closing, all prorating calculations and reductions contemplated by the terms of the Rights Offering will have been effected and payment to us for the subscribed-for

Units will have cleared. All shares and Warrants that you purchase in the Rights Offering will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration, or DRS, account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of shares or warrants. If you hold your shares in the name of a broker, dealer, bank or other nominee, DTC will credit your account with your nominee with the securities you purchase in the Rights Offering. Broadridge Corporate Issuer Solutions, Inc. is acting as the warrant agent in this offering.

**After I send in my payment and Rights Certificate to the Subscription Agent, may I cancel my exercise of Subscription Rights?**

No. Exercises of Subscription Rights are irrevocable, even if you later learn information that you consider to be unfavorable to the exercise of your Subscription Rights. You should not exercise your Subscription Rights unless you are certain that you wish to purchase Units at the Subscription Price.

**How much will our company receive from the Rights Offering?**

Assuming that all 10,000 Units are sold in the Rights Offering, we estimate that the net proceeds from the Rights Offering will be approximately \$8.9 million, based on the Subscription Price of \$1,000 per Unit, after deducting fees and expenses payable to the dealer-manager, and after deducting other estimated expenses payable by us and excluding any proceeds received upon exercise of any Warrants. If all Warrants included in the Units are exercised for cash at the exercise price of \$0.48 per share, we will receive an additional \$6.0 million. We intend to use up to approximately the first \$8 million of the net proceeds from the exercise of Subscription Rights for research and development, including the development of our current pipeline and, if funds remain, for further development of our Celution System products and other related research and development. In addition, we intend to use any remaining net proceeds for general corporate purposes, primarily sales and marketing initiatives relating to our potential commercialization of our Habeo scleroderma therapy and our ATI-0918 in Europe, and any other remaining net proceeds for general administrative expenses, working capital and capital expenditures. See “Use of Proceeds.”

**Are there risks in exercising my Subscription Rights?**

Yes. The exercise of your Subscription Rights involves risks. Exercising your Subscription Rights involves the purchase of shares of our Series B Preferred Stock and Warrants to purchase common stock and you should consider this investment as carefully as you would consider any other investment. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. In addition, until we obtain Stockholder Approval of an amendment to our certificate of incorporation to increase our authorized shares of common stock, you will not be able to exercise your Warrants and, if the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering is greater than 30,000,000, you will only be able to convert that number of shares of Series B Preferred Stock obtained by multiplying the shares of Series B Preferred Stock issued to you in this offering by (i) 30,000,000 divided by (ii) the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering, which we refer to as the Pro Rata Conversion Percentage (rounded down to the nearest whole share). All shares of Series B Preferred Stock will automatically convert into common stock after Stockholder Approval is obtained. We intend to seek Stockholder Approval at each annual stockholder meeting until the Stockholder Approval is obtained, but we cannot guarantee that we will obtain the Stockholder Approval. In addition, our Warrants may not be listed on NASDAQ and, even if listed, a market for the Warrants may not develop. See “Risk Factors” for discussion of additional risks involved in investing in our securities.

**Can the board of directors terminate or extend the Rights Offering?**

Yes. Our board of directors may decide to terminate the Rights Offering at any time and for any reason before the expiration of the Rights Offering. We also have the right to extend the Rights Offering for additional periods in our sole discretion. We do not presently intend to extend the Rights Offering. We will notify stockholders and the public if the Rights Offering is terminated or extended by issuing a press release announcing the extension no later than 9:00 a.m., Eastern Time, on the next business day after the most recently announced expiration date of the Rights Offering.

**If the Rights Offering is not completed or is terminated, will my subscription payment be refunded to me?**

Yes. The Subscription Agent will hold all funds it receives in a segregated bank account until completion of the Rights Offering. If we do not complete the Rights Offering, all subscription payments received by the Subscription Agent will be returned within 10 business days after the termination or expiration of the Rights Offering, without interest or deduction. If you own shares in “street name,” it may take longer for you to receive your subscription payment because the Subscription Agent will return payments through the record holder of your shares.

**How do I exercise my Rights if I live outside the United States?**

The Subscription Agent will hold Rights Certificates for stockholders having addresses outside the United States. To exercise Subscription Rights, foreign stockholders must notify the Subscription Agent and timely follow other procedures described in the section entitled “The Rights Offering – Foreign Shareholders.”

**What fees or charges apply if I purchase shares in the Rights Offering?**

We are not charging any fee or sales commission to issue Subscription Rights to you or to issue shares of common stock or Warrants to you if you exercise your Subscription Rights. If you exercise your Subscription Rights through a broker, dealer, bank or other nominee, you are responsible for paying any fees your broker, dealer, bank or other nominee may charge you.

**What are the U.S. federal income tax consequences of receiving and/or exercising my Subscription Rights?**

For U.S. federal income tax purposes, we do not believe you should recognize income or loss in connection with the receipt or exercise of Subscription Rights in the Rights Offering. You should consult your tax advisor as to the tax consequences of the Rights Offering in light of your particular circumstances. For a detailed discussion, see “Material U.S. Federal Income Tax Consequences.”

**To whom should I send my forms and payment?**

If your shares are held in the name of a broker, dealer, bank or other nominee, then you should send your subscription documents and subscription payment to that broker, dealer, bank or other nominee. If you are the record holder, then you should send your subscription documents, Rights Certificate, and subscription payment to the Subscription Agent by hand delivery, first class mail or courier service to:

*By mail:*

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS Re-Organization Dept.  
P.O. Box 1317  
Brentwood, New York 11717-0693  
(855) 793-5068 (toll free)

*By hand or overnight courier:*

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS IWS  
51 Mercedes Way  
Edgewood, New York 11717  
(855) 793-5068



You or, if applicable, your nominee are solely responsible for completing delivery to the Subscription Agent of your subscription documents, Rights Certificate and payment. You should allow sufficient time for delivery of your subscription materials to the Subscription Agent and clearance of payment before the expiration of the Rights Offering at 5:00 p.m. Eastern Time on November 21, 2017.

**Whom should I contact if I have other questions?**

If you have other questions or need assistance, please contact the Information Agent:

Broadridge Corporate Issuer Solutions, Inc.  
(855) 793-5068 (toll free)

**Who is the dealer-manager?**

Maxim Group LLC will act as dealer-manager for the Rights Offering. Under the terms and subject to the conditions contained in the dealer-manager agreement, the dealer-manager will use its best efforts to solicit the exercise of Subscription Rights. We have agreed to pay the dealer-manager certain fees for acting as dealer-manager and to reimburse the dealer-manager for certain out-of-pocket expenses incurred in connection with this offering. The dealer-manager is not underwriting or placing any of the Subscription Rights or the shares of our common stock or Warrants being issued in the Rights Offering and is not making any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares of Series B Preferred Stock or Warrants.

## PROSPECTUS SUMMARY

*This summary contains basic information about us and this offering. Because it is a summary, it does not contain all of the information that you should consider before investing. Before you decide to invest in our Units, you should read this entire prospectus carefully, including the section entitled “Risk Factors” and any information incorporated by reference herein.*

### **Our Business**

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 many 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.

Cytori Cell Therapy, or CCT, 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 and conditions. To bring this promise to health providers, we are developing novel therapies prepared and administered at the patient’s bedside with proprietary technologies that include therapy-specific reusable, automated Celution devices and single-use procedure sets consisting of Celution consumables, Celase reagent, and Intravase reagent. Our lead product candidate, Habeo™ Cell Therapy™, is being evaluated in a U.S. pivotal clinical trial for the treatment of impaired hand function in scleroderma. On July 24, 2017, we announced top-line, preliminary data from our Phase III pivotal STAR trial of Habeo in patients with scleroderma. The U.S. multi-center STAR trial enrolled and evaluated 88 patients with scleroderma, including 51 patients within the diffuse cutaneous subset and 37 with limited cutaneous scleroderma. While the primary and secondary endpoints did not reach statistical significance at 24 or 48 weeks, the trial data reported clinically meaningful improvement in the primary and secondary endpoints of both hand function and scleroderma-associated functional disability, for Habeo treated patients compared to placebo, in the pre-specified subgroup of patients with diffuse cutaneous scleroderma. Additional CCT treatments are in various stages of development in the areas of immunology, urology, wounds, and orthopedics. 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 manufacture the CCT capital equipment and procedure sets in the United States and the United Kingdom and source our Celase and Intravase reagents from a third-party supplier. We also have obtained regulatory approval to sell some of our CCT products, including our Celution devices and disposable components, 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 and product experience and data, and generate sales.

The Cytori Nanomedicine platform features a versatile 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. 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 pegylated liposomal encapsulated doxorubicin. Pegylated 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. We are currently evaluating our options to ATI-0918 in the U.S. market. Our second nanomedicine drug candidate is ATI-1123, a novel and 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.

The 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 Scleroderma Treatment with Celution Processed Adipose Derived Regenerative 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. The first sites for our STAR trial were initiated in July 2015 and final enrollment of 88 patients was completed in June 2016. As noted above, preliminary assessment of unblinded topline data show that while the primary and secondary endpoints did not reach statistical significance at 24 or 48 weeks, the trial data reported clinically meaningful improvement in the primary and secondary endpoints of both hand function and scleroderma-associated functional disability, for Habeo treated patients compared to placebo, in the subgroup of patients with diffuse cutaneous scleroderma.

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

- We completed our Phase II Celution Prepared Adipose Derived Regenerative Cells in the Treatment of OsteoArthritis of the Knee, or ACT-OA clinical trial, in June 2015. The 48-week analysis of the ECCO-50 therapeutic was performed as planned and the top-line data are described in the “Osteoarthritis” section below.
- In July 2015, a Japanese investigator-initiated study of the ECCI-50 therapeutic 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 June 2017, the ADRESU trial had over 66% enrolled. The Japan Agency for Medical Research and Development, or AMED, has provided partial funding for the ADRESU trial.
- We are developing the DCCT-10 therapeutic 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. In April 2017, we received approval of an Investigational Device Exemption, or IDE, from the U.S. Food and Drug Administration, or FDA, to conduct a pilot clinical trial of CCT in patients with thermal burn injuries. This trial is referred to as the RELIEF clinical trial. In May 2017, we announced BARDA’s exercise of Option 2 of up to approximately \$13.4 million to fund RELIEF. We anticipate initiation of RELIEF in 2017.

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 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 of consumable sets and market presence in Japan will continue to grow in 2017. The sale of Celution devices, procedure sets, 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. It also provides us with product and customer feedback.

Scleroderma is a rare and chronic connective tissue disease generally classified as an autoimmune rheumatic disorder. An estimated 300,000 Americans have scleroderma, about one-third of whom have the systemic form of the disease, known as systemic sclerosis, or SSc. SSc is further subclassified as diffuse cutaneous and limited cutaneous SSc. Diffuse subset has more severe disease with significant hand dysfunction and internal organ involvement. Diffuse scleroderma accounts for between one third and one half of all cases of systemic sclerosis. Women are affected four times more frequently than men and the condition is typically detected between the ages of 30 and 50. More than 90% of scleroderma patients are afflicted with 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 they do little to modify disease progression or substantially improve symptoms. Current 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, prostanoids, Endothelin-1 receptor antagonists, and immunosuppressants may be used but are often accompanied by side effects. If these medications are unsuccessful, health providers may perform a sympathectomy to remove nerves to increase blood flow and decrease long-term pain.

SCLERADEC-I is a completed, investigator-initiated, 12-patient, open-label, Phase I pilot trial 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 endpoints 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 *Current 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. The trial is currently approaching 75% enrollment and we expect enrollment 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.

Based on the results of the SCLERADEC-I trial, we initiated the US-based STAR trial. 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. Of the 88 patients enrolled in STAR, 51 had diffuse cutaneous scleroderma while 37 had the limited form of the disease.

On July 24, 2017, we announced top-line, preliminary data from the STAR trial. While the primary and secondary endpoints did not reach statistical significance at 24 or 48 weeks, the trial data reported clinically meaningful improvement in the primary and secondary endpoints of both hand function and scleroderma-associated functional disability for Habeo™ treated patients compared to placebo, in the subgroup of patients with diffuse cutaneous scleroderma.

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.

### *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, some parameters achieving statistical significance, 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 beneficial effect of ECCO-50. The accumulated data and experienced gained will be critical in considering designs of further clinical trials in osteoarthritis 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.

Another therapeutic target under evaluation by Cytori led by the University of Nagoya and three other sites and partially supported by 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 June 2017, the trial is over 66% enrolled. 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 pre-market authorization, or 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. In April 2017, we received approval of an IDE from the FDA to conduct a pilot clinical trial of CCT in patients with thermal burn injuries. This trial is referred to as the RELIEF clinical trial. In May 2017, we announced BARDA's exercise of Option 2 of up to approximately \$13.4 million to fund RELIEF.

In accordance with the terms of the Amendments, BARDA will provide us with reimbursement of costs incurred, plus payment of a fixed fee, in the aggregate amount of up to approximately \$13.4 million, or the Funding Amount. We are responsible for further costs in excess of the Funding Amount, if any, to meet the objectives of the Pilot Trial. The Amendments also extend the term of the BARDA Agreement and the period of performance of Option 2 of the BARDA Agreement to November 30, 2020.

*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 PMA application for Habeo Cell Therapy, should the STAR Phase III data support filing of this application.

In February 2017, we completed our acquisition of the assets of Azaya Therapeutics, Inc., or Azaya, pursuant to the terms of an Asset Purchase Agreement, dated January 26, 2017. Pursuant to the terms of the agreement, we acquired equipment, certain intellectual property including, a portfolio of investigational therapies and related assets, and assumed certain liabilities, from Azaya in exchange for the issuance of 1,173,241 of shares of our common stock in the amount of \$2.3 million, assumption of approximately \$1.8 million in Azaya's payables, 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, most likely in conjunction with a commercial and or commercial partner.

ATI-0918 is a complex generic formulation of the market leading DOXIL®/CAELYX®, which is a pegylated liposomal encapsulation of doxorubicin and approved in the United States for use in ovarian cancer, multiple myeloma, and Kaposi's Sarcoma; and in the European Union for breast cancer, ovarian cancer, multiple myeloma, and Kaposi's Sarcoma. The current approval pathway for ATI-0918 is to leverage existing bioequivalence data to CAELYX® for approval in the EU and to demonstrate bioequivalence 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 Standard, or RS, to serve as the basis for submission of an ANDA 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 novel 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 and 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 promising results in preclinical animal models that suggest it may have superior qualities to doxetaxel, including actions against some tumor types that are not amenable to treatment by doxetaxel. 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 and potential development partnerships.

## Summary of the Rights Offering

<b>Securities to be Offered</b>	We are distributing to you, at no charge, one non-transferable Subscription Right to purchase one Unit for every share of our common stock that you owned on the Record Date. Each Unit consists of one share of Series B Preferred Stock and 1,250 Warrants.
<b>Size of offering</b>	10,000 Units.
<b>Subscription Price</b>	\$1,000 per Unit.
<b>Series B Preferred Stock</b>	Each share of Series B Preferred Stock will be convertible at our option or at the option of the holder at any time, and automatically upon receipt of Stockholder Approval, into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series B Preferred Stock by a conversion price of \$0.40 per share, subject to adjustment; provided that, until we obtain the Stockholder Approval, if the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering is greater than 30,000,000, each holder will only be able to convert that number of shares of Series B Preferred Stock obtained by multiplying the shares of Series B Preferred Stock issued to such holder in this offering by (i) 30,000,000 divided by (ii) the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering (rounded down to the nearest whole share). The Series B Preferred Stock has certain conversion rights, dividend rights and liquidation preferences.
<b>Warrants</b>	Each Warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.48 per share, subject to adjustment, from the date of Stockholder Approval through its expiration 30 months from the date of issuance. The Warrants will be exercisable for cash, or, solely during any period when a registration statement for the exercise of the Warrants is not in effect, on a cashless basis, at any time and from time to time after the date the Stockholder Approval is obtained. We intend to apply to list the Warrants on NASDAQ, although there is no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet the minimum listing criteria to be accepted for listing on NASDAQ. We may redeem the Warrants for \$0.01 per Warrant if our common stock closes above \$1.20 per share for ten consecutive trading days, provided that we may not do so prior to the first anniversary of closing of the Rights Offering.
<b>Record Date</b>	5:00 p.m., Eastern Time, October 27, 2017.
<b>Basic Subscription Rights</b>	Your Basic Subscription Right will entitle you to purchase one Unit at the Subscription Price.
<b>Over-Subscription Privilege</b>	If you exercise your Basic Subscription Rights in full, you may also choose to purchase a portion of any Units that are not purchased by our other stockholders through the exercise of their Basic Subscription Rights, subject to proration and stock ownership limitations described elsewhere in this prospectus.
<b>Expiration date</b>	The Subscription Rights will expire at 5:00 p.m., Eastern Time, on November 21, 2017.



<b>Procedure for Exercising Subscription Rights</b>	<p>To exercise your Subscription Rights, you must take the following steps:</p> <p>If you are a record holder of our common stock, you must deliver payment and a properly completed Rights Certificate to the Subscription Agent to be received before 5:00 p.m., Eastern Time, on November 21, 2017. You may deliver the documents and payments by first class mail or courier service. If you use first class mail for this purpose, we recommend using registered mail, properly insured, with return receipt requested.</p> <p>If you are a beneficial owner of shares that are registered in the name of a broker, dealer, bank or other nominee, you should instruct your broker, dealer, bank or other nominee to exercise your Subscription Rights on your behalf. Please follow the instructions of your nominee, who may require that you meet a deadline earlier than 5:00 p.m., Eastern Time, on November 21, 2017.</p>
<b>Delivery of Shares and Warrants</b>	<p>As soon as practicable after the expiration of the Rights Offering, and within five business days thereof, we expect to close on subscriptions and for the Subscription Agent to arrange for the issuance of the shares of Series B Preferred Stock and Warrants purchased pursuant to the Rights Offering. All shares and Warrants that are purchased in the Rights Offering will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration, or DRS, account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of shares or warrants. If you hold your shares in the name of a bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering.</p>
<b>Non-transferability of Subscription Rights</b>	<p>The Subscription Rights may not be sold, transferred, assigned or given away to anyone. The Subscription Rights will not be listed for trading on any stock exchange or market.</p>
<b>Transferability of Warrants</b>	<p>The Warrants will be separately transferable following their issuance and through their expiration 30 months from the date of issuance.</p>
<b>No board recommendation</b>	<p>Our board of directors is not making a recommendation regarding your exercise of the Subscription Rights. You are urged to make your decision to invest based on your own assessment of our business and financial condition, our prospects for the future, the terms of the Rights Offering, the information in this prospectus and other information relevant to your circumstances. Please see “Risk Factors” for a discussion of some of the risks involved in investing in our securities.</p>
<b>No Revocation</b>	<p>All exercises of Subscription Rights are irrevocable, even if you later learn of information that you consider to be unfavorable to the exercise of your Subscription Rights.</p>
<b>Use of Proceeds</b>	<p>Assuming the exercise of Subscription Rights to purchase all 10,000 Units of the Rights Offering, after deducting fees and expenses and excluding any proceeds received upon exercise of any Warrants, we estimate the net proceeds of the Rights Offering will be approximately \$8.9 million. We intend to use up to approximately the first \$8 million of the net proceeds from the exercise of Subscription Rights for research and development, including the development of our current pipeline and, if funds remain, for further development of our Celution System products and other related research and development. In addition, we intend to use any remaining net proceeds for general corporate purposes, primarily sales and marketing initiatives relating to our potential commercialization of our Habeo scleroderma therapy and our ATI-0918 in Europe, and any other remaining net proceeds for general administrative expenses, working capital and capital expenditures. See “Use of Proceeds.”</p>

<b>Material U.S. Federal Income Tax Consequences</b>	For U.S. federal income tax purposes, we do not believe you should recognize income or loss upon receipt or exercise of a Subscription Right. You should consult your own tax advisor as to the tax consequences of the Rights Offering in light of your particular circumstances. See “Material U.S. Federal Income Tax Consequences.”
<b>Extension and Termination</b>	Although we do not presently intend to do so, we may extend the Rights Offering for additional time in our sole discretion. Our board of directors may for any reason terminate the Rights Offering at any time before the completion of the Rights Offering.
<b>Subscription and Information Agent</b>	Broadridge Corporate Issuer Solutions, Inc.
<b>Questions</b>	If you have any questions about the Rights Offering, please contact the Subscription and Information Agent, Broadridge Corporate Issuer Solutions, Inc., at (855) 793-5068 (toll free).
<b>Market for common stock</b>	Our common stock is listed on NASDAQ under the symbol “CYTX.”
<b>Market for preferred stock</b>	There is no established public trading market for the Series B Preferred Stock, and we do not expect a market to develop. In addition, we do not intend to apply for listing of the Series B Preferred Stock on any securities exchange or recognized trading system.
<b>Dealer-Manager</b>	Maxim Group LLC.

## RISK FACTORS

*Investing in our securities involves a high degree of risk. Before making an investment decision with respect to our securities, we urge you to carefully consider the risks described in the “Risk Factors” section of our Annual Report on Form 10-K for the year ended December 31, 2016 and our subsequent Quarterly Reports on Form 10-Q, which are incorporated by reference into this prospectus. These risk factors relate to our business, intellectual property, regulatory matters, and ownership of our common stock. In addition, the following risk factors present material risks and uncertainties associated with the Rights Offering. The risks and uncertainties incorporated by reference into this prospectus or described below are not the only ones we face. Additional risks and uncertainties not presently known or which we consider immaterial as of the date hereof may also have an adverse effect on our business. If any of the matters discussed in the following risk factors were to occur, our business, financial condition, results of operations, cash flows or prospects could be materially adversely affected, the market price of our securities could decline and you could lose all or part of your investment in our securities.*

### **Risks Related to the Rights Offering**

***There is currently a limited market for our securities, and any trading market that exists in our securities may be highly illiquid and may not reflect the underlying value of our net assets or business prospects.***

Although our common stock is traded on NASDAQ, there is currently a limited market for our common stock and an active market may never develop. Investors are cautioned not to rely on the possibility that an active trading market may develop. In addition, the Subscription Rights are non-transferrable.

***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 transferred 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.

On September 5, 2017, we received notice from Nasdaq staff relating to our noncompliance with the \$1.00 minimum bid price per share requirement. Pursuant to NASDAQ Listing Rule 5810(c)(3)(A), we have been granted a 180 calendar day compliance period, or until March 5, 2018, to regain compliance with the minimum bid price requirement. During the compliance period, our shares of common stock will continue to be listed and traded on NASDAQ. To regain compliance, the closing bid price of our shares of common stock must meet or exceed \$1.00 per share for at least 10 consecutive business days during the 180 calendar day compliance period.

If we are not in compliance by March 5, 2018, we may be afforded a second 180 calendar day compliance period. To qualify for this additional time, we will be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for NASDAQ with the exception of the minimum bid price requirement. In addition, we will be required to notify NASDAQ of our intention to cure the minimum bid price deficiency by effecting a reverse stock split, if necessary. However, if it appears to the Nasdaq staff that we will not be able to cure the deficiency, or if we are otherwise not eligible, NASDAQ would notify us that our securities would be subject to delisting. In the event of such a notification, we may appeal the Nasdaq staff’s determination to delist our securities, but there can be no assurance the Nasdaq staff would grant our request for continued listing.

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.

***Our share price is volatile, and you may not be able to resell our shares at a profit or at all.***

The market price of our common stock could be subject to wide fluctuations in response to numerous factors, some of which are beyond our control. These factors include, among other things:

- 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.

The market price of our common stock may decline after you elect to exercise your subscription rights. If that occurs, you may have committed to buy shares of our Series B Preferred Stock which are convertible into shares of our common stock at a price greater than the prevailing market price. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. We will not pay you interest on funds delivered to the Subscription Agent pursuant to the exercise of Subscription Rights.

***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, including the announcement of the results of our Phase III clinical trial in July 2017, and for other reasons discussed elsewhere in the "Risk Factors" section in the Quarterly Report on Form 10-Q filed on August 11, 2017, which heightens our litigation risk. If we face such litigation, 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.

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

As of June 30, 2017, we had 33,328,401 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.

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

We have never paid cash dividends in the past, and we 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 Finance, LLC, or Oxford, as amended, or the Loan and Security Agreement, 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.

***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 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.

***Our management will have broad discretion over the use of the net proceeds from this offering, you may not agree with how we use the proceeds and the proceeds may not be invested successfully.***

Our management will have broad discretion as to the use of the net proceeds from this offering and could use them for purposes other than those contemplated at the time of commencement of this offering. Accordingly, you will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. It is possible that, pending their use, we may invest the net proceeds in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flows.

***Your interest in our company may be diluted as a result of this Rights Offering.***

Stockholders who do not fully exercise their Subscription Rights should expect that they will, at the completion of this offering, own a smaller proportional interest in our company than would otherwise be the case had they fully exercised their Subscription Rights. Further, the shares issuable upon the exercise of the Warrants to be issued pursuant to the Rights Offering will dilute the ownership interest of stockholders not participating in this offering or holders of Warrants who have not exercised them.

Further, if you purchase Units in this offering at the Subscription Price, you may suffer immediate and substantial dilution in the net tangible book value of our common stock. See “Dilution” in this prospectus for a more detailed discussion of the dilution which may incur in connection with this offering.

***Completion of the Rights Offering is not subject to us raising a minimum offering amount.***

Completion of the Rights Offering is not subject to us raising a minimum offering amount and, therefore, proceeds may be insufficient to meet our objectives, thereby increasing the risk to investors in this offering, including investing in a company that continues to require capital. See “Use of Proceeds.”

***This Rights Offering may cause the trading price of our common stock to decrease.***

The Subscription Price, together with the number of shares of common stock we propose to issue and ultimately will issue if this Rights Offering is completed, may result in an immediate decrease in the market price of our common stock. This decrease may continue after the completion of this Rights Offering. If that occurs, you may have committed to buy shares of our Series B Preferred Stock which are convertible into shares of our common stock at a price greater than the prevailing market price. We cannot predict the effect, if any, that the availability of shares for future sale represented by the Warrants issued in connection with the Rights Offering will have on the market price of our common stock from time to time. Further, if a substantial number of Subscription Rights are exercised and the holders of the shares received upon exercise of those Subscription Rights or the related Warrants choose to sell some or all of the shares underlying the Subscription Rights or the related Warrants, the resulting sales could depress the market price of our common stock.

***Holders of our Warrants will have no rights as a common stockholder until such holders exercise their Warrants and acquire our common stock.***

Until holders of Warrants acquire shares of our common stock upon exercise of the Warrants, holders of Warrants will have no rights with respect to the shares of our common stock underlying such Warrants. Upon exercise of the Warrants, the holders thereof will be entitled to exercise the rights of a common stockholder only as to matters for which the record date occurs after the exercise date.

***If we terminate this offering for any reason, we will have no obligation other than to return subscription monies within 10 business days.***

We may decide, in our sole discretion and for any reason, to cancel or terminate the Rights Offering at any time prior to the expiration date. If this offering is cancelled or terminated, we will have no obligation with respect to Subscription Rights that have been exercised except to return within 10 business days, without interest or deduction, all subscription payments deposited with the Subscription Agent. If we terminate this offering and you have not exercised any Subscription Rights, such Subscription Rights will expire and be worthless.

***The Subscription Price determined for this offering is not an indication of the fair value of our common stock.***

In determining the Subscription Price, our board of directors considered a number of factors, including, but not limited to, our need to raise capital in the near term to continue our operations, the current and historical trading prices of our common stock, a price that would increase the likelihood of participation in the Rights Offering, the cost of capital from other sources, the value of the Series B Preferred Stock and Warrants being issued as components of the Unit, comparable precedent transactions, an analysis of stock price trading multiples for companies similar to us that, among other things, did not need to raise capital in the near-term, and our most recently forecasted revenue relative to our peer group. The Subscription Price does not necessarily bear any relationship to any established criteria for value. No valuation consultant or investment banker has opined upon the fairness or adequacy of the Subscription Price. You should not consider the Subscription Price as an indication of the value of our company or our common stock.

***If you do not act on a timely basis and follow subscription instructions, your exercise of Subscription Rights may be rejected.***

Holders of Subscription Rights who desire to purchase shares of our Series B Preferred Stock and Warrants in this offering must act on a timely basis to ensure that all required forms and payments are actually received by the Subscription Agent prior to 5:00 p.m., New York City time, on the expiration date, unless extended. If you are a beneficial owner of shares of common stock and you wish to exercise your Subscription Rights, you must act promptly to ensure that your broker, dealer, bank, trustee or other nominee acts for you and that all required forms and payments are actually received by your broker, dealer, bank, trustee or other nominee in sufficient time to deliver such forms and payments to the Subscription Agent to exercise the Subscription Rights granted in this offering that you beneficially own prior to 5:00 p.m., New York City time on the expiration date, as may be extended. We will not be responsible if your broker, dealer, bank, trustee or other nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent prior to 5:00 p.m., New York City time, on the expiration date.

If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to your exercise in this Rights Offering, the Subscription Agent may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the Subscription Agent undertakes to contact you concerning an incomplete or incorrect subscription form or payment, nor are we under any obligation to correct such forms or payment. We have the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

***You may not receive all of the Units for which you subscribe.***

While we are distributing to holders of our common stock one Subscription Rights for every share of common stock owned on the Record Date, we are only seeking to raise \$10.0 million dollars in gross proceeds in this Rights Offering. As a result, based on 33,328,401 shares of common stock outstanding as of June 30, 2017, we would grant Subscription Rights to acquire 33,328,401 Units but will only accept subscriptions for 10,000 Units. Accordingly, sufficient Units may not be available to honor your subscription in full. If excess Units are available after the exercise of Basic Subscription Rights, holders who fully exercise their Basic Subscription Rights will be entitled to subscribe for an additional number of Units. Over-Subscription Privileges will be allocated pro rata among Rights holders who over-subscribed, based on the number of over-subscription Units to which they have subscribed. We cannot guarantee that you will receive any or the entire amount of Units for which you subscribed. If for any reason the amount of Units allocated to you is less than you have subscribed for, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.



Unless we otherwise agree in writing, a person or entity, together with related persons or entities, may not exercise Subscription Rights (including Over-Subscription Privileges) to purchase Units that, when aggregated with their existing ownership, would result in such person or entity, together with any related persons or entities, owning in excess of 19.99% of our issued and outstanding shares of common stock following the closing of the transactions contemplated by this Rights Offering. If the amount of shares allocated to you is less than your subscription request, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.

***If you make payment of the Subscription Price by personal check, your check may not clear in sufficient time to enable you to purchase shares in this Rights Offering.***

Any personal check used to pay for shares and Warrants to be issued in this Rights Offering must clear prior to the expiration date of this Rights Offering, and the clearing process may require five or more business days. If you choose to exercise your Subscription Rights, in whole or in part, and to pay for shares and Warrants by personal check and your check has not cleared prior to the expiration date of this Rights Offering, you will not have satisfied the conditions to exercise your Subscription Rights and will not receive the shares and Warrants you wish to purchase.

***The receipt of Subscription Rights may be treated as a taxable distribution to you.***

We believe the distribution of the Subscription Rights in this Rights Offering should be a non-taxable distribution to holders of shares of common stock under Section 305(a) of the Internal Revenue Code of 1986, as amended, or the Code. Please see the discussion on the “Material U.S. Federal Income Tax Consequences” below. This position is not binding on the IRS, or the courts, however. If this Rights Offering is deemed to be part of a “disproportionate distribution” under Section 305 of the Code, your receipt of Subscription Rights in this offering may be treated as the receipt of a taxable distribution to you equal to the fair market value of the Subscription Rights. Any such distribution would be treated as dividend income to the extent of our current and accumulated earnings and profits, if any, with any excess being treated as a return of capital to the extent thereof and then as capital gain. Each holder of shares of common stock and each holder of a warrant providing for participation is urged to consult his, her or its own tax advisor with respect to the particular tax consequences of this Rights Offering.

***Exercising the Subscription Rights limits your ability to engage in certain hedging transactions that could provide you with financial benefits.***

By exercising the Subscription rights, you are representing to us that you have not entered into any short sale or similar transaction with respect to our common stock since the record date for the Rights Offering. In addition, the Subscription Rights provide that, upon exercise of the Subscription Right, you agree not to enter into any short sale or similar transaction with respect to our common stock for so long as you continue to hold Warrants issued in connection with the exercise of the Subscription Right. These requirements prevent you from pursuing certain investment strategies that could provide you greater financial benefits than you might have realized if the Subscription Rights did not contain these requirements.

***The Subscription Rights are not transferable, and there is no market for the Subscription Rights.***

You may not sell, transfer, assign or give away your Subscription Rights. Because the Subscription Rights are non-transferable, there is no market or other means for you to directly realize any value associated with the Subscription Rights. You must exercise the Subscription Rights to realize any potential value from your Subscription Rights.

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

There is no established trading market for the Warrants to be issued pursuant to this offering, and the Warrants may not be widely distributed. We intend to apply to list the Warrants for trading on NASDAQ, but there can be no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet minimum listing criteria to be accepted for listing on NASDAQ or that a market will develop 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 are not accepted for listing on NASDAQ or if a market for the Warrants does not develop, 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, of which this prospectus is a part, covering the Warrants and the common stock issuable upon exercise of the Warrants;
- the interest of securities dealers in making a market; and
- the market for similar securities.

***There is no public market for the Series B Preferred Stock in this offering.***

There is no established public trading market for the Series B Preferred Stock, and we do not expect a market to develop. In addition, we do not intend to apply for listing of the Series B Preferred Stock on any securities exchange or recognized trading system.

***If we are unable to obtain stockholder approval for the issuance of all of the shares of common stock upon exercise of the Warrants and conversion of the Series B Preferred Stock you will not be able to exercise your Warrants and may not be able to convert all of your Series B Preferred Stock to common stock.***

We agreed to seek approval from our stockholders to approve an amendment to our certificate of incorporation to increase our authorized shares of common stock, which we refer to as the Stockholder Approval. If we do not obtain the Stockholder Approval, you will not be able to exercise your Warrants and, if the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering is greater than 30,000,000, you will only be able to convert that number of shares of Series B Preferred Stock obtained by multiplying the shares of Series B Preferred Stock issued to you in this offering by the Pro Rata Conversion Percentage (rounded down to the nearest whole share). We intend to seek Stockholder Approval at each annual stockholder meeting until the Stockholder Approval is obtained, but we cannot guarantee that we will obtain the Stockholder Approval. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. In addition, our warrants may not be listed on NASDAQ and, even if listed, a market for the Warrants may not develop.

***The market price of our common stock may never exceed the exercise price of the Warrants issued in connection with this offering.***

The Warrants being issued in connection with this offering become exercisable upon issuance and will expire 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 your economic benefit from owning them.***

The Warrants contain features that allow us to redeem the Warrants and that prohibit you 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 \$1.20 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 30 days' prior written notice of redemption. If we give notice of redemption, you will be forced to sell or exercise your Warrants or accept the redemption price. The notice of redemption could come at a time when it is not advisable or possible for you to exercise the Warrants. As a result, you may be unable to benefit from owning the Warrants being redeemed. In addition, for so long as you continue to hold Warrants, you will not be permitted to enter into any short sale or similar transaction with respect to our Common Stock. This could prevent you from pursuing investment strategies that could provide you greater financial benefits from owning the Warrant.

***The dealer-manager is not underwriting, nor acting as placement agent of, the Subscription Rights or the securities underlying the Subscription Rights.***

Maxim Group LLC will act as dealer-manager for this Rights Offering. As provided in the dealer-manager agreement, the dealer-manager will provide marketing assistance in connection with this offering. The dealer-manager is not underwriting or placing any of the Subscription Rights or the shares of our Series B Preferred Stock or Warrants being issued in this offering and is not making any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares or Warrants. The dealer-manager will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith or gross negligence by the dealer-manager. The Rights Offering may not be successful despite the services of the dealer-manager to us in this offering.

***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.

***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 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 \$9 million in cash and cash equivalents on hand as of June 30, 2017 will be sufficient to fund our currently contemplated operations at least through October 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. Subsequently, 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 listing deficiency issues and resultant 1-for-15 reverse stock split, made it more difficult to procure additional capital on terms reasonably acceptable to us. Most recently, the release in July 2017 of the top-line data from our STAR Phase III trial, in which we announced the failure to achieve the trial's primary and secondary endpoints, resulted in a further substantial decrease in our stock price. 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, 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, subject to satisfaction of certain conditions. 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 sources 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 June 30, 2017, our public float was 33.1 million shares, the value of which was \$36.4 million based upon the closing price of our common stock of \$1.10 on such date. The value of one-third of our public float calculated on the same basis was approximately \$12.1 million.

Further, our Loan and Security Agreement with Oxford as further described below, requires us to maintain a minimum of \$1.5 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 \$9 million at June 30, 2017, we estimate that we will need to raise additional capital, obtain a waiver or further amend the Loan and Security Agreement prior to January 2018 to avoid defaulting under our \$1.5 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.

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 through 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, Oxford made a term loan to us in an aggregate principal amount of \$17.7 million, 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, from January 2017 through August 2017, we were 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. On September 20, 2017, we and Oxford amended the Loan and Security Agreement to extend the interest-only period to January 1, 2018, with a further extension through August 1, 2018 if we receive unrestricted net cash proceeds of at least \$5 million on or before December 29, 2017. If the interest-only period is extended through August 1, 2018, then, beginning September 2018, we will be required to make payments of principal (in the amount of approximately \$1.3 million per month) and accrued interest in equal monthly installments of approximately \$1.4 million to amortize the Term Loan through June 1, 2019, the maturity date. If the interest-only period is not extended through August 1, 2018, then, beginning January 2018, we will be required to make payments of principal (in the amount of approximately \$720,000 per month) and accrued interest in equal monthly installments of approximately \$800,000 to amortize the Term Loan through 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. 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 \$1.5 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 (\$14.2 million as of June 30, 2017) 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, 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.

***If we are unable to 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 staff 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.

## FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated herein by reference contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on our management's current beliefs, expectations and assumptions about future events, conditions and results and on information currently available to us. Discussions containing these forward-looking statements may be found, among other places, in the Sections entitled "Business," "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" incorporated by reference from our most recent Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q, as well as any amendments thereto, filed with the SEC.

All statements, other than statements of historical fact, included or incorporated herein regarding our strategy, future operations, financial position, future revenues, projected costs, plans, prospects and objectives are forward-looking statements. Words such as "expect," "anticipate," "intend," "plan," "believe," "seek," "estimate," "think," "may," "could," "will," "would," "should," "continue," "potential," "likely," "opportunity" and similar expressions or variations of such words are intended to identify forward-looking statements, but are not the exclusive means of identifying forward-looking statements. Additionally, forward-looking statements include statements concerning future matters such as our anticipated expenditures, including those related to pre-clinical and clinical trials and research studies and general and administrative expenses, the potential size of the markets for our products, future development and/or expansion of our products and therapies in our markets, our ability to generate product revenues or effectively manage our gross profit margins, our ability to obtain regulatory clearances, our ability to commercialize our novel cell therapy platform products and our nanomedicine platform, expectations as to our future performance, liquidity and capital resources, including our potential need for additional financing and the availability thereof as well as our ability to continue to service our existing debt, and the potential enhancement of our cash position and stock price through development, marketing, and licensing arrangements. Such statements are based on currently available operating, financial and competitive information and are subject to various risks, uncertainties and assumptions that could cause actual results to differ materially from those anticipated or implied in our forward-looking statements due to a number of factors including, but not limited to, our need and ability to raise additional cash, our joint ventures, risks associated with laws or regulatory requirements applicable to us, market conditions, product performance, potential litigation, competition within the regenerative medicine field, and other factors set forth above under the section entitled "Risk Factors" in this prospectus and any accompanying prospectus supplement. Given these risks, uncertainties and other factors, many of which are beyond our control, you should not place undue reliance on these forward-looking statements.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to revise any forward-looking statements to reflect events or developments occurring after the date of this prospectus, even if new information becomes available in the future.



## USE OF PROCEEDS

Assuming that all 10,000 Units are subscribed for in the Rights Offering, we estimate that the net proceeds from the Rights Offering will be approximately \$8.9 million, after deducting expenses relating to this offering payable by us estimated at approximately \$1.1 million, including dealer-manager fees and expenses and excluding any proceeds received upon exercise of any Warrants.

We intend to use up to approximately the first \$8 million of the net proceeds from the exercise of Subscription Rights for research and development, including the development of our current pipeline and, if funds remain, for further development of our Celution System products and other related research and development. In addition, we intend to use any remaining net proceeds for general corporate purposes, primarily sales and marketing initiatives relating to our potential commercialization of our Habeo scleroderma therapy and our ATI-0918 in Europe, and any other remaining net proceeds for general administrative expenses, working capital and capital expenditures. We expect to use any proceeds we receive from the exercise of Warrants for substantially the same purposes and in substantially the same manner. Pending these uses, we intend to invest the net proceeds in investment-grade, short-term, interest-bearing securities. It is possible that, pending their use, we may invest the net proceeds in a way that does not yield a favorable, or any, return for us.

Our management will have broad discretion as to the allocation of the net proceeds from this offering and could use them for purposes other than those contemplated at the time of commencement of this offering.

## DILUTION

Purchasers of Units in the Rights Offering will experience an immediate dilution of the net tangible book value per share of our common stock. Our net tangible book value as of June 30, 2017 was approximately \$(0.5) million, or \$(0.02) per share of our common stock (based upon 33,328,401 shares of our common stock outstanding). Net tangible book value per share is equal to our total tangible assets less our total liabilities, divided by the number of shares of our outstanding common stock.

Dilution per share of common stock equals the difference between the amount per share of common stock paid by purchasers of Units in the Rights Offering (assuming the conversion of shares of Series B Preferred Stock into common stock and ascribing no value to the Warrants contained in the Units) and the net tangible book value per share of our common stock immediately after the Rights Offering.

Based on the sale by us in this Rights Offering of a maximum of 10,000 Units at the Subscription Price of \$1,000 per Unit (assuming the conversion of all shares of Series B Preferred Stock into common stock and no exercise of the Warrants), and after deducting estimated offering expenses and dealer-manager fees and expenses payable by us, our pro forma net tangible book value as of June 30, 2017 would have been approximately \$8.4 million, or \$0.14 per share. This represents an immediate increase in pro forma net tangible book value to existing stockholders of \$0.16 per share and an immediate dilution to purchasers in the Rights Offering of \$0.26 per share. The following table illustrates this per-share dilution:

Subscription Price		\$	1,000
Conversion price per share of Series B Preferred Stock contained in a Unit		\$	0.40
Net tangible book value per share as of June 30, 2017	\$	(0.02)	
Increase in net tangible book value per share attributable to Rights Offering	\$	0.16	
Pro forma net tangible book value per share as of June 30, 2017, after giving effect to Rights Offering	\$		0.14
Dilution in net tangible book value per share to purchasers in the Rights Offering	\$		0.26

The information above is as of June 30, 2017 and excludes:

- 1,297,532 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2017 with a weighted average exercise price of \$11.88 per share;
- 515 shares of common stock issuable upon the vesting of outstanding restricted stock awards;
- 1,869,941 shares of common stock available for future grants under our 2014 Equity Incentive Plan as of June 30, 2017;
- 261,833 shares of common stock available for future grants under our 2015 New Employee Incentive Plan as of June 30, 2017;
- 3,659,504 shares of our common stock issuable upon the exercise of outstanding warrants as of June 30, 2017 with a weighted-average exercise price of \$4.06 per share;
- 1,387,917 shares of our common stock issued after June 30, 2016 pursuant to our equity line of credit; and
- the shares of our common stock issuable upon the exercise of the Warrants offered hereby.

## MARKET PRICE OF OUR COMMON STOCK AND RELATED STOCKHOLDER MATTERS

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.

	Price Ranges	
	High	Low
<b><i>Fiscal Year Ended December 31, 2017</i></b>		
First Quarter	\$1.99	\$1.53
Second Quarter	\$1.72	\$0.92
Third Quarter (through September 29, 2017)	\$1.17	\$0.31
<b><i>Fiscal Year Ended December 31, 2016</i></b>		
First Quarter	\$3.30	\$1.95
Second Quarter	\$5.25	\$2.00
Third Quarter	\$2.25	\$1.83
Fourth Quarter	\$2.00	\$1.36
<b><i>Fiscal Year Ended December 31, 2015</i></b>		
First Quarter	\$20.55	\$6.60
Second Quarter	\$20.25	\$8.40
Third Quarter	\$8.25	\$4.50
Fourth Quarter	\$6.30	\$2.85

The closing price of our common stock on September 29, 2017 was \$0.37 per share. All of our outstanding shares have been deposited with the Depository Trust & Clearing Corporation, or DTCC, since December 2005. As of August 10, 2017, we had approximately 15 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.

### DIVIDEND POLICY

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. We currently intend to retain all of our future earnings, if any, to finance the operation and expansion of our business. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that our board of directors may deem relevant.

## THE RIGHTS OFFERING

### **The Subscription Rights**

We are distributing to the record holders of our common stock, at no charge, non-transferable Subscription Rights to purchase one Unit at a subscription price of \$1,000 per Unit. Each Basic Subscription Right will entitle you to purchase one share of our Series B Preferred Stock and 1,250 Warrants. Each Warrant will be exercisable for one share of our common stock at an exercise price of \$0.48 per share from the date of issuance through the expiration 30 months from the date of issuance. Each record holder of our common stock will receive one Subscription Right for every share of our common stock owned by such record holder as of the Record Date. Each Subscription Right entitles the record holder to a Basic Subscription Right and an Over-Subscription Privilege.

#### ***Basic Subscription Rights***

Your Basic Subscription Rights will entitle you to purchase one share of our Series B Preferred Stock and 1,250 Warrants. For example, if you owned 100 shares of common stock as of the Record Date, you will receive 100 Subscription Rights and will have the right to purchase 100 shares of our Series B Preferred Stock and Warrants to purchase 125,000 shares of our common stock for \$1,000 per Unit, or a total payment of \$100,000. You may exercise all or a portion of your Basic Subscription Rights, or you may choose not to exercise any of your Basic Subscription Rights. If you do not exercise your Basic Subscription Rights in full, you will not be entitled to exercise your Over-Subscription Privilege.

#### ***Over-Subscription Privilege***

If you exercise your Basic Subscription Rights in full, you may also choose to exercise your Over-Subscription Privilege. Subject to proration and the limitations described in this prospectus, we will seek to honor the Over-Subscription Requests in full. If Over-Subscription Requests exceed the number of Units available, however, we will allocate the available Units pro rata among the stockholders as of the record date exercising the Over-Subscription Privilege in proportion to the number of shares of our common stock each of those stockholders owned on the Record Date, relative to the number of shares owned on the Record Date by all stockholders as of the record date exercising the Over-Subscription Privilege. If this pro rata allocation results in any stockholder receiving a greater number of Units than the record holder subscribed for pursuant to the exercise of the Over-Subscription Privilege, then such record holder will be allocated only that number of Units for which the record holder oversubscribed, and the remaining Units will be allocated among all other stockholders exercising the Over-Subscription Privilege on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated.

Broadridge Corporate Issuer Solutions, Inc., the Subscription Agent for the Rights Offering, will determine the over-subscription allocation based on the formula described above.

To the extent the aggregate subscription payment of the actual number of unsubscribed Units available to you pursuant to the Over-Subscription Privilege is less than the amount you actually paid in connection with the exercise of the Over-Subscription Privilege, you will be allocated only the number of unsubscribed Units available to you, and any excess subscription payments will be returned to you, without interest or deduction, with 10 business days after expiration of the Rights Offering.

We can provide no assurances that you will actually be entitled to purchase the number of Units issuable upon the exercise of your Over-Subscription Privilege in full at the expiration of the Rights Offering. We will not be able to satisfy any requests for Units pursuant to the Over-Subscription Privilege if all of our stockholders exercise their Basic Subscription Rights in full, and we will only honor an Over-Subscription Privilege to the extent sufficient Units are available following the exercise of Basic Subscription Rights.

## **Limitation on the Purchase of Units**

You may only purchase the number of Units purchasable upon exercise of the number of Basic Subscription Rights distributed to you in the Rights Offering, plus the Over-Subscription Privilege, if any. Accordingly, the number of Units that you may purchase in the Rights Offering is limited by the number of shares of our common stock you held on the Record Date and by the extent to which other stockholders exercise their Basic Subscription Rights and Over-Subscription Privileges, which we cannot determine prior to completion of the Rights Offering. However, due to stock exchange restrictions, we will not issue Units in the Rights Offering to the extent that a holder would beneficially own, together with any other person with whom such holder's securities may be aggregated under applicable law, more than 19.9% of our outstanding shares of common stock.

## **Subscription Price**

The Subscription Price is \$1,000 per Unit. The Subscription Price does not necessarily bear any relationship to our past or expected future results of operations, cash flows, current financial condition, or any other established criteria for value. No change will be made to the Subscription Price by reason of changes in the trading price of our common stock or other factor prior to the expiration of this Rights Offering.

## **Determination of Subscription Price**

In the determining the Subscription Price, the board of directors considered a variety of factors including those listed below:

- our need to raise capital in the near term to continue our operations;
- the current and historical trading prices of our common stock;
- a price that would increase the likelihood of participation in the Rights Offering;
- the cost of capital from other sources;
- the value of the Series B Preferred Stock being issued as a component of the Unit;
- the value of the Warrant being issued as a component of the Unit;
- comparable precedent transactions, including the percentage of shares offered, the terms of the subscription rights being offered, the subscription price and the discount that the subscription price represents to the immediately prevailing closing prices for these offerings;
- an analysis of stock price trading multiples for companies similar to us that, among other things, did not need to raise capital in the near-term; and
- our most recently forecasted revenue relative to our peer group.

The Subscription Price does not necessarily bear any relationship to any established criteria for value. No valuation consultant or investment banker has opined upon the fairness or adequacy of the Subscription Price. You should not consider the Subscription Price as an indication of actual value of our company or our common stock. The market price of our common stock may decline during or after the Rights Offering. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. We cannot predict the price at which our shares of common stock and, if listed, the Warrants will trade after the Rights Offering. You should obtain a current price quote for our common stock and perform an independent assessment of our Series B Preferred Stock and Warrants before exercising your Subscription Rights and make your own assessment of our business and financial condition, our prospects for the future, and the terms of this Rights Offering. Once made, all exercises of Subscription Rights are irrevocable.

#### **No Short-Sales**

By exercising the Subscription rights, you are representing to us that you have not entered into any short sale or similar transaction with respect to our common stock since the record date for the Rights Offering. In addition, the Subscription Rights provide that, upon exercise of the Subscription Right, you represent that you have not since the Record Date and, for so long as you continue to hold Warrants issued in connection with the exercise of the Subscription Right, agree to not to enter into any short sale or similar transaction with respect to our common stock. These requirements prevent you from pursuing certain investment strategies that could provide you greater financial benefits than you might have realized if the Subscription Rights did not contain these requirements.

#### **No Recombination**

The Series B Preferred Stock and Warrants comprising the Units will separate upon the exercise of the Subscription Rights, and the Units will not trade as a separate security. Holders may not recombine shares of Series B Preferred Stock and Warrants to receive a Unit.

#### **Non-Transferability of Subscription Rights**

The Subscription Rights are non-transferable (other than by operation of law) and, therefore, you may not sell, transfer, assign or give away your Subscription Rights to anyone. The Subscription Rights will not be listed for trading on any stock exchange or market.

#### **Expiration Date; Extension**

The subscription period, during which you may exercise your Subscription Rights, expires at 5:00 p.m., Eastern Time, on November 21, 2017, which is the expiration of the Rights Offering. If you do not exercise your Subscription Rights before that time, your Subscription Rights will expire and will no longer be exercisable. We will not be required to issue shares to you if the Subscription Agent receives your Rights Certificate or your subscription payment after that time. We have the option to extend the Rights Offering in our sole discretion, although we do not presently intend to do so. We may extend the Rights Offering by giving oral or written notice to the Subscription Agent before the Rights Offering expires. If we elect to extend the Rights Offering, we will issue a press release announcing the extension no later than 9:00 a.m., Eastern Time, on the next business day after the most recently announced expiration date of the Rights Offering.

If you hold your shares of common stock in the name of a broker, dealer, bank or other nominee, the nominee will exercise the Subscription Rights on your behalf in accordance with your instructions. Please note that the nominee may establish a deadline that may be before 5:00 p.m., Eastern Time, on November 21, 2017, which is the expiration date that we have established for the Rights Offering.

## **Termination**

We may terminate the Rights Offering at any time and for any reason prior to the completion of the Rights Offering. If we terminate the Rights Offering, we will issue a press release notifying stockholders and the public of the termination.

## **Return of Funds upon Completion or Termination**

The Subscription Agent will hold funds received in payment for shares in a segregated account pending completion of the Rights Offering. The Subscription Agent will hold this money until the Rights Offering is completed or is terminated. To the extent you properly exercise your Over-Subscription Privilege for an amount of Units that exceeds the number of unsubscribed Units available to you, any excess subscription payments will be returned to you within 10 business days after the expiration of the Rights Offering, without interest or deduction. If the Rights Offering is terminated for any reason, all subscription payments received by the Subscription Agent will be returned within 10 business days, without interest or deduction.

## **Shares of Our Capital Stock and Warrants Outstanding After the Rights Offering**

Assuming no other transactions by us involving our capital stock prior to the expiration of the Rights Offering, and if the Rights Offering is fully subscribed, upon consummation of the Rights Offering we will have 33,328,401 shares of common stock issued and outstanding, 10,000 shares of Series B Preferred Stock issued and outstanding, and Warrants to purchase an additional 12,500,000 shares of our common stock issued and outstanding, based on 33,328,401 shares of our common stock outstanding as of June 30, 2017. The exact number of shares of Series B Preferred Stock and Warrants that we will issue in this offering will depend on the number of Units that are subscribed for in the Rights Offering.

## **Methods for Exercising Subscription Rights**

The exercise of Subscription Rights is irrevocable and may not be cancelled or modified. You may exercise your Subscription Rights as follows:

### ***Subscription by Record Holders***

If you are a stockholder of record, the number of Units you may purchase pursuant to your Subscription Rights is indicated on the enclosed Rights Certificate. You may exercise your Subscription Rights by properly completing and executing the Rights Certificate and forwarding it, together with your full payment, to the Subscription Agent at the address given below under "Subscription Agent," to be received before 5:00 p.m., Eastern Time, on November 21, 2017.

### ***Subscription by Beneficial Owners***

If you are a beneficial owner of shares of our common stock that are registered in the name of a broker, dealer, bank or other nominee, you will not receive a Rights Certificate. Instead, we will issue one Subscription Right to such nominee record holder for all shares of our common stock held by such nominee at the Record Date. If you are not contacted by your nominee, you should promptly contact your nominee in order to subscribe for shares in the Rights Offering and follow the instructions provided by your nominee.

To properly exercise your Over-Subscription Privilege, you must deliver the subscription payment related to your Over-Subscription Privilege before the Rights Offering expires. Because we will not know the total number of unsubscribed Units before the Rights Offering expires, if you wish to maximize the number of shares you purchase pursuant to your Over-Subscription Privilege, you will need to deliver payment in an amount equal to the aggregate subscription payment for the maximum number of Units that you wish to purchase.

## Payment Method

Payments must be made in full in U.S. currency by personal check, certified check or bank draft, or by wire transfer, and payable to “Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.” You must timely pay the full subscription payment, including payment for the Over-Subscription Privilege, for the full number of shares of our common stock you wish to acquire pursuant to the exercise of Subscription Rights by delivering a:

- certified or personal check drawn against a U.S. bank payable to “Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.”;
- U.S. Postal money order payable to “Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.”; or
- wire transfer of immediately available funds directly to the account maintained by Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent, for purposes of accepting subscriptions in this Rights Offering at U.S. Bank, 800 Nicollet Mall, Minneapolis, MN 55402, ABA, # 123000848, Account # 153910728465, for further credit Cytori Therapeutics, Inc., Account # 153911608922.

If you elect to exercise your Subscription Rights, you should consider using a wire transfer or certified check drawn on a U.S. bank to ensure that the Subscription Agent receives your funds before the Rights Offering expires. If you send a personal check, payment will not be deemed to have been received by the Subscription Agent until the check has cleared. The clearinghouse may require five or more business days to clear a personal check. Accordingly, holders who wish to pay the Subscription Price by means of a personal check should make payment sufficiently in advance of the expiration of the Rights Offering to ensure that the payment is received and clears by that date. If you send a certified check, payment will be deemed to have been received by the Subscription Agent immediately upon receipt of such instrument.

You should read the instruction letter accompanying the Rights Certificate carefully and strictly follow it. **DO NOT SEND RIGHTS CERTIFICATES OR PAYMENTS DIRECTLY TO US.** We will not consider your subscription received until the Subscription Agent has received delivery of a properly completed and duly executed Rights Certificate and payment of the full subscription payment.

The method of delivery of Rights Certificates and payment of the subscription payment to the Subscription Agent will be at the risk of the holders of Subscription Rights. If sent by mail, we recommend that you send those certificates and payments by registered mail, properly insured, with return receipt requested, or by overnight courier, and that you allow a sufficient number of days to ensure delivery to the Subscription Agent and clearance of payment before the Rights Offering expires.



## Missing or Incomplete Subscription Forms or Payment

If you fail to complete and sign the Rights Certificate or otherwise fail to follow the subscription procedures that apply to the exercise of your Subscription Rights before the Rights Offering expires, the Subscription Agent will reject your subscription or accept it to the extent of the payment received. Neither we nor our Subscription Agent undertakes any responsibility or action to contact you concerning an incomplete or incorrect subscription form, nor are we under any obligation to correct such forms. We have the sole discretion to determine whether a subscription exercise properly complies with the subscription procedures.

If you send a payment that is insufficient to purchase the number of shares you requested, or if the number of shares you requested is not specified in the forms, the payment received will be applied to exercise your Subscription Rights to the fullest extent possible based on the amount of the payment received. Any excess subscription payments received by the Subscription Agent will be returned, without interest or deduction, within 10 business days following the expiration of the Rights Offering.

## Issuance of Series B Preferred Stock and Warrants

The shares of Series B Preferred Stock and Warrants that are purchased in the Rights Offering as part of the Units will be issued in book-entry, or uncertificated, form meaning that you will receive a DRS account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of shares or warrants. If you hold your shares of common stock in the name of a bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering.

## Subscription and Information Agent

The Subscription and Information Agent for the Rights Offering is Broadridge Corporate Issuer Solutions, Inc.. The address to which Rights Certificates and payments should be mailed or delivered by overnight courier is provided below. If sent by mail, we recommend that you send documents and payments by registered mail, properly insured, with return receipt requested, and that you allow a sufficient number of days to ensure delivery to the Subscription Agent and clearance or payment before the Rights Offering expires. Do not send or deliver these materials to us.

By mail:

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS Re-Organization Dept.  
P.O. Box 1317  
Brentwood, New York 11717-0693  
(855) 793-5068 (toll free)

By hand or overnight courier:

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS IWS  
51 Mercedes Way  
Edgewood, New York 11717  
(855) 793-5068

If you deliver the Rights Certificates in a manner different than that described in this prospectus, we may not honor the exercise of your Subscription Rights.

You should direct any questions or requests for assistance concerning the method of subscribing for the shares of our common stock or for additional copies of this prospectus to the Information Agent as follows:

Broadridge Corporate Issuer Solutions, Inc.  
(855) 793-5068 (toll free)

## **Warrant Agent**

The warrant agent for the Warrants is Broadridge Corporate Issuer Solutions, Inc.

## **No Fractional Shares**

We will not issue fractional shares of Series B Preferred Stock in the Rights Offering. Subscription Rights holders will only be entitled to purchase a number of Units representing a whole number of shares and Warrants, rounded down to the nearest whole number of shares or Warrants, as applicable, a holder would otherwise be entitled to purchase. Any excess subscription payments received by the Subscription Agent will be returned within 10 business days after expiration of the Rights Offering, without interest or deduction. Similarly, no fractional shares of common stock will be issued in connection with the exercise of a Warrant. Instead, for any such fractional share that would otherwise have been issuable upon exercise of the Warrant, the holder will be entitled to a cash payment equal to the pro-rated per share market price of the common stock on the last trading day preceding the exercise.

## **Notice to Brokers and Nominees**

If you are a broker, dealer, bank or other nominee holder that holds shares of our common stock for the account of others on the Record Date, you should notify the beneficial owners of the shares for whom you are the nominee of the Rights Offering as soon as possible to learn their intentions with respect to exercising their Subscription Rights. If a beneficial owner of our common stock so instructs, you should complete the Rights Certificate and submit it to the Subscription Agent with the proper subscription payment by the expiration date. You may exercise the number of Subscription Rights to which all beneficial owners in the aggregate otherwise would have been entitled had they been direct holders of our common stock on the Record Date, provided that you, as a nominee record holder, make a proper showing to the Subscription Agent by submitting the form entitled "Nominee Holder Certification," which is provided with your Rights Offering materials. If you did not receive this form, you should contact our Subscription Agent to request a copy.

## **Validity of Subscriptions**

We will resolve all questions regarding the validity and form of the exercise of your Subscription Rights, including time of receipt and eligibility to participate in the Rights Offering. Our determination will be final and binding. Once made, subscriptions are irrevocable; we will not accept any alternative, conditional, or contingent subscriptions. We reserve the absolute right to reject any subscriptions not properly submitted or the acceptance of which would be unlawful. You must resolve any irregularities in connection with your subscriptions before the expiration date of the Rights Offering, unless we waive them in our sole discretion. Neither we nor the Subscription Agent is under any duty to notify you or your representative of defects in your subscriptions. A subscription will be considered accepted, subject to our right to withdraw or terminate the Rights Offering, only when the Subscription Agent receives a properly completed and duly executed Rights Certificate and any other required documents and the full subscription payment including final clearance of any personal check. Our interpretations of the terms and conditions of the Rights Offering will be final and binding.

## **Stockholder Rights**

You will have no rights as a holder of the shares of our common stock issuable upon conversion of the Series B Preferred Stock issued in the Rights Offering until such Series B Preferred Stock is converted to common stock and such shares of common stock are issued in book-entry form or your account at your broker, dealer, bank or other nominee is credited with the shares of our common stock. Holders of Warrants issued in connection with the Rights Offering will not have rights as holders of our common stock until such Warrants are exercised and the shares of common stock underlying the Warrants are issued to the holder.

## **Foreign Shareholders**

We will not mail this prospectus or Rights Certificates to stockholders with addresses that are outside the United States or that have an army post office or foreign post office address. The Subscription Agent will hold these Rights Certificates for their account. To exercise Subscription Rights, our foreign stockholders must notify the Subscription Agent prior to 5:00 p.m., Eastern Time, on November 21, 2017, the third business day prior to the expiration date, of your exercise of Subscription Rights and provide evidence satisfactory to us, such as a legal opinion from local counsel, that the exercise of such Subscription Rights does not violate the laws of the jurisdiction in which such stockholder resides and payment by a U.S. bank in U.S. dollars before the expiration of the offer. If no notice is received by such time or the evidence presented is not satisfactory to us, the Subscription Rights represented thereby will expire.

## **No Revocation or Change**

Once you submit the Rights Certificate or have instructed your nominee of your subscription request, you are not allowed to revoke or change the exercise or request a refund of monies paid. All exercises of Subscription Rights are irrevocable, even if you learn information about us that you consider to be unfavorable. You should not exercise your Subscription Rights unless you are certain that you wish to purchase shares at the Subscription Price.

## **U.S. Federal Income Tax Treatment of Rights Distribution**

For U.S. federal income tax purposes, we do not believe holders of shares of our common stock or warrants should recognize income or loss upon receipt or exercise of a Subscription Right. See “Material U.S. Federal Income Tax Consequences.”

## **No Recommendation to Rights Holders**

Our board of directors is not making a recommendation regarding your exercise of the Subscription Rights. Stockholders who exercise Subscription Rights risk investment loss on money invested. There is currently no market for our shares of Series B Preferred Stock and, unless we or you choose to convert your shares of Series B Preferred Stock, or they automatically convert upon receipt of Stockholder Approval, into shares of common stock, you will not be able to re-sell such shares. We cannot predict the price at which our shares of common stock and, if listed, the Warrants will trade after the Rights Offering. You should make your investment decision based on your assessment of our business and financial condition, our prospects for the future and the terms of this Rights Offering. Please see “Risk Factors” for a discussion of some of the risks involved in investing in our common stock.

## **Fees and Expenses**

We will pay all fees charged by the Subscription Agent and the Information Agent, and by the dealer-manager. You are responsible for paying any other commissions, fees, taxes or other expenses incurred in connection with the exercise of your Subscription Rights.

## **Listing**

The Subscription Rights may not be sold, transferred, assigned or given away to anyone, and will not be listed for trading on any stock exchange or market. There is no established public trading market for the Series B Preferred Stock and we do not intend to apply for listing of Series B Preferred Stock on any securities exchange or recognized trading system. We intend to apply to have the Warrants listed for trading on NASDAQ, however, there is no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet the minimum listing criteria to be accepted for listing on NASDAQ. The shares of our common stock issuable upon conversion of the Series B Preferred Stock and underlying the Warrants to be issued in the Rights Offering are traded on NASDAQ under the symbol "CYTX."

## **Important**

**Do not send Rights Certificates directly to us. You are responsible for choosing the payment and delivery method for your Rights Certificate and you bear the risks associated with such delivery. If you choose to deliver your Rights Certificate and payment by mail, we recommend that you use registered mail, properly insured, with return receipt requested. We also recommend that you allow a sufficient number of days to ensure delivery to the Subscription Agent and clearance of payment prior to the expiration time.**

## **Distribution Arrangements**

Maxim Group LLC is the dealer-manager for the Rights Offering. The dealer-manager will provide marketing assistance and advice to us in connection with the Rights Offering and will use its best efforts to solicit the exercise of Subscription Rights and participation in the Over-Subscription Privilege. The dealer-manager is not underwriting or placing any of the Subscription Rights or the shares of our Series B Preferred Stock or Warrants to be issued in the Rights Offering and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares or Warrants. We have agreed to pay the dealer-manager certain fees and to reimburse the dealer-manager for certain out-of-pocket expenses incurred in connection with this offering. See "Plan of Distribution."

## MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion is a summary of the material U.S. federal income tax consequences of the receipt and exercise (or expiration) of the Subscription Rights acquired through the Rights Offering, the ownership and disposition of shares of our Series B Preferred Stock and Warrants received upon exercise of the Subscription Rights or the ownership and disposition of the shares of common stock received upon the conversion of our Series B Preferred Stock or the exercise of the Warrants, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, or Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service, or IRS, in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a holder of the Subscription Rights, shares of our Series B Preferred Stock, Warrants or shares of our common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the receipt of Subscription Rights acquired through the Rights Offering by persons holding shares of our common stock, the exercise (or expiration) of the Subscription Rights, the acquisition, ownership and disposition of shares of our Series B Preferred Stock, the acquisition, ownership and disposition (or expiration) of Warrants acquired upon exercise of the Subscription Rights, and the acquisition, ownership and disposition of shares of our common stock acquired upon conversion of our Series B Preferred Stock or exercise of the Warrants.

This discussion is limited to holders that hold the Subscription Rights, shares of our Series B Preferred Stock, Warrants and shares of our common stock, in each case, as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a holder’s particular circumstances, including the impact of the alternative minimum tax or the unearned income Medicare contribution tax. In addition, it does not address consequences relevant to holders subject to particular rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons holding the Subscription Rights, shares of our Series B Preferred Stock, Warrants or shares of our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- “controlled foreign corporations,” “passive foreign investment companies,” and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell the Subscription Rights, shares of Series B Preferred Stock, or Warrants or shares of our common stock under the constructive sale provisions of the Code;
- persons for whom our stock constitutes “qualified small business stock” within the meaning of Section 1202 of the Code;

- persons who hold or receive the Subscription Rights, shares of our Series B Preferred Stock, Warrants or shares of our common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- tax-qualified retirement plans.

If an entity treated as a partnership for U.S. federal income tax purposes holds our common stock, Subscription Rights, shares of our Series B Preferred Stock and Warrants acquired upon exercise of Subscription Rights or shares of our common stock acquired upon conversion of our Series B Preferred Stock or exercise of the Warrants, as the case may be, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

**THIS DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE RECEIPT, OWNERSHIP AND EXERCISE OF SUBSCRIPTION RIGHTS AND THE ACQUISITION, OWNERSHIP, AND DISPOSITION OF SHARES OF OUR SERIES B PREFERRED STOCK AND WARRANTS ACQUIRED UPON EXERCISE OF SUBSCRIPTION RIGHTS AND SHARES OF OUR COMMON STOCK ACQUIRED UPON CONVERSION OF SERIES B PREFERRED STOCK OR EXERCISE OF WARRANTS ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.**

### **Tax Considerations Applicable to U.S. Holders**

#### **Definition of a U.S. Holder**

For purposes of this discussion, a “U.S. holder” is any beneficial owner of shares of our common stock Subscription Rights, shares of our Series B Preferred Stock and Warrants acquired upon exercise of Subscription Rights or shares of our common stock acquired upon conversion of our Series B Preferred Stock or exercise of Warrants, as the case may be, that, for U.S. federal income tax purposes, is:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more United States persons (within the meaning of Section 7701(a)(30) of the Code), or (2) has made a valid election under applicable Treasury Regulations to continue to be treated as a United States person.

## Receipt of Subscription Rights

Although the authorities governing transactions such as this Rights Offering are complex and do not speak directly to the consequences of certain aspects of this Rights Offering, including the inclusion of the right to purchase Warrants in the Subscription Rights (rather than the right to purchase only shares of our Series B Preferred Stock) and the effects of the Over-Subscription Privilege, we do not believe a U.S. holder's receipt of Subscription Rights pursuant to the Rights Offering should be treated as a taxable distribution with respect to their existing shares of common stock for U.S. federal income tax purposes. Section 305(a) of the Code states that a stockholder's taxable income does not include in-kind stock dividends; however, the general non-recognition rule in Section 305(a) of the Code is subject to exceptions described in Section 305(b) of the Code, which include "disproportionate distributions." A disproportionate distribution is a distribution or a series of distributions, including deemed distributions, that has the effect of the receipt of cash or other property by some stockholders or holders of debt instruments convertible into stock and an increase in the proportionate interest of other stockholders in a corporation's assets or earnings and profits. We do not believe that the receipt of Subscription Rights pursuant to the Rights Offering is a disproportionate distribution for these purposes.

Our position regarding the tax-free treatment of the Subscription Right distribution is not binding on the IRS, or the courts. If this position is finally determined by the IRS or a court to be incorrect, whether on the basis that the issuance of the Subscription Rights is a "disproportionate distribution" or otherwise, the fair market value of the Subscription Rights would be taxable to U.S. holders of our common stock as a dividend to the extent of the U.S. holder's pro rata share of our current and accumulated earnings and profits, if any, with any excess being treated as a return of capital to the extent thereof and then as capital gain. If our position is incorrect, the tax consequences applicable to the holders may also be materially different than as described below.

The following discussion is based upon the treatment of the Subscription Right issuance as a non-taxable distribution with respect to a U.S. holders' existing shares of common stock for U.S. federal income tax purposes.

### Tax Basis in the Subscription Rights

If the fair market value of the Subscription Rights a U.S. holder receives is less than 15% of the fair market value of the U.S. holder's existing shares of common stock (with respect to which the Subscription Rights are distributed) on the date the U.S. holder receives the Subscription Rights, the Subscription Rights will be allocated a zero tax basis for U.S. federal income tax purposes, unless the U.S. holder elects to allocate its tax basis in its existing shares of common stock between its existing shares of common stock and the Subscription Rights in proportion to the relative fair market values of the existing shares of common stock and the Subscription Rights determined on the date of receipt of the Subscription Rights. If a U.S. holder chooses to allocate tax basis between its existing common shares and the Subscription Rights, the U.S. holder must make this election on a statement included with its timely filed tax return (including extensions) for the taxable year in which the U.S. holder receives the Subscription Rights. Such an election is irrevocable. However, if the fair market value of the Subscription Rights a U.S. holder receives is 15% or more of the fair market value of their existing shares of common stock on the date the U.S. holder receives the Subscription Rights, then the U.S. holder must allocate its tax basis in its existing shares of common stock between those shares and the Subscription Rights the U.S. holder receives in proportion to their fair market values determined on the date the U.S. holder receives the Subscription Rights. Please refer to discussion below regarding the U.S. tax treatment of a U.S. holder that, at the time of the receipt of the Subscription Right, no longer holds the common stock with respect to which the Subscription Right was distributed.

The fair market value of the Subscription Rights on the date that the Subscription Rights are distributed is uncertain, and we have not obtained, and do not intend to obtain, an appraisal of the fair market value of the Subscription Rights on that date. In determining the fair market value of the Subscription Rights, U.S. holders should consider all relevant facts and circumstances, including any difference between the Subscription Price of the Subscription Rights and the trading price of our shares of common stock on the date that the Subscription Rights are distributed, the fair market value of the Series B Preferred Stock, the exercise price of the Warrants, the length of the period during which the Subscription Rights may be exercised and the fact that the Subscription Rights are non-transferable.

## **Exercise of Subscription Rights**

Generally, a U.S. holder will not recognize gain or loss upon the exercise of a Subscription Right in the Rights Offering. A U.S. holder's adjusted tax basis, if any, in the Subscription Right plus the Subscription Price should be allocated between the new share of Series B Preferred Stock and the Warrant acquired upon exercise of the Subscription Right in proportion to their relative fair market values on the exercise date. This allocation will establish the U.S. holder's initial tax basis for U.S. federal income tax purposes in the new shares of Series B Preferred Stock and Warrants received upon exercise. The holding period of a share of Series Preferred Stock or a Warrant acquired upon exercise of a Subscription Right in the Rights Offering will begin on the date of exercise.

If, at the time of the receipt or exercise of the Subscription Right, the U.S. holder no longer holds the common stock with respect to which the Subscription Right was distributed, then certain aspects of the tax treatment of the receipt and exercise of the Subscription Right are unclear, including (1) the allocation of the tax basis between the shares of our common stock previously sold and the Subscription Right, (2) the impact of such allocation on the amount and timing of gain or loss recognized with respect to the shares of our common stock previously sold, and (3) the impact of such allocation on the tax basis of the shares of our Series B Preferred Stock and Warrants acquired upon exercise of the Subscription Right. If a U.S. holder exercises a Subscription Right received in the Rights Offering after disposing of shares of our common stock with respect to which the Subscription Right is received, the U.S. holder should consult its tax advisor.

## **Expiration of Subscription Rights**

If a U.S. holder allows Subscription Rights received in the Rights Offering to expire, the U.S. holder should not recognize any gain or loss for U.S. federal income tax purposes, and the U.S. holder should re-allocate any portion of the tax basis in its existing common shares previously allocated to the Subscription Rights that have expired to the existing common shares.

## **Sale or Other Disposition, Exercise or Expiration of Warrants**

Upon the sale or other disposition of a Warrant (other than by exercise), a U.S. holder will generally recognize capital gain or loss equal to the difference between the amount realized on the sale or other disposition and the U.S. holder's tax basis in the Warrant. This capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period in such Warrant is more than one year at the time of the sale or other disposition. The deductibility of capital losses is subject to certain limitations.

In general, a U.S. holder will not be required to recognize income, gain or loss upon exercise of a Warrant for its exercise price. A U.S. holder's tax basis in a share of our common stock received upon exercise of the Warrants will be equal to the sum of (1) the U.S. holder's tax basis in the Warrants exchanged therefor and (2) the exercise price of such Warrants. A U.S. holder's holding period in the shares of our common stock received upon exercise will commence on the day after such U.S. holder exercises the Warrants. Although there is no direct legal authority as to the U.S. federal income tax treatment of an exercise of a Warrant on a cashless basis, we intend to take the position that such exercise will not be taxable, either because the exercise is not a gain realization event or because it qualifies as a tax-free recapitalization. In the former case, the holding period of the shares of our common stock received upon exercise of Warrants should commence on the day after the Warrants are exercised. In the latter case, the holding period of the shares of our common stock received upon exercise of Warrants would include the holding period of the exercised Warrants. However, our position is not binding on the IRS and the IRS may treat a cashless exercise of a Warrant as a taxable exchange. U.S. holders are urged to consult their tax advisors as to the consequences of an exercise of a Warrant on a cashless basis, including with respect to their holding period and tax basis in the common stock received.



If a Warrant expires without being exercised, a U.S. holder will recognize a capital loss in an amount equal to such holder's tax basis in the Warrant. Such loss will be long-term capital loss if, at the time of the expiration, the U.S. holder's holding period in such Warrant is more than one year. The deductibility of capital losses is subject to certain limitations.

### **Constructive Dividends on Warrants**

As described in the section entitled "Dividend Policy," we do not anticipate declaring or paying dividends to holders of our common stock in the foreseeable future. However, if at any time during the period in which a U.S. holder holds Warrants, we were to pay a taxable dividend to our stockholders and, in accordance with the anti-dilution provisions of the Warrants, the exercise price of the Warrants were decreased, that decrease would be deemed to be the payment of a taxable dividend to a U.S. holder of the Warrants to the extent of our earnings and profits, notwithstanding the fact that such holder will not receive a cash payment. If the exercise price is adjusted in certain other circumstances (or in certain circumstances, there is a failure to make adjustments), such adjustments may also result in the deemed payment of a taxable dividend to a U.S. holder. U.S. holders should consult their tax advisors regarding the proper treatment of any adjustments to the exercise price of the Warrants.

We are currently required to report the amount of any deemed distributions on our website or to the IRS and to holders not exempt from reporting. On April 12, 2016, the IRS proposed regulations addressing the amount and timing of deemed distributions, as well as, obligations of withholding agents and filing and notice obligations of issuers in respect of such deemed distributions. If adopted as proposed, the regulations would generally provide that (i) the amount of a deemed distribution is the excess of the fair market value of the right to acquire stock immediately after the conversion rate adjustment over the fair market value of the right to acquire stock (after the conversion rate adjustment) without the adjustment, (ii) the deemed distribution occurs at the earlier of the date the adjustment occurs under the terms of the instrument and the date of the actual distribution of cash or property that results in the deemed distribution and (iii) we are required to report the amount of any deemed distributions on our website or to the IRS and to all holders (including holders that would otherwise be exempt from reporting). The final regulations will be effective for deemed distributions occurring on or after the date of adoption, but holders and withholding agents may rely on them prior to that date under certain circumstances.

### **Distributions on Series B Preferred Stock and Common Stock**

As described in the section entitled "Dividend Policy," we do not anticipate declaring or paying dividends to holders of our Series B Preferred Stock or common stock in the foreseeable future. However, if we do make distributions of cash or property on our Series B Preferred Stock or common stock, such distributions will constitute dividends to the extent paid out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. Dividends received by a corporate U.S. holder may be eligible for a dividends received deduction, subject to applicable limitations. Dividends received by certain non-corporate U.S. holders, including individuals, are generally taxed at the lower applicable capital gains rate provided certain holding period and other requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital and first be applied against and reduce a U.S. holder's adjusted tax basis in its Series B Preferred Stock or common stock, as the case may be, but not below zero. Any excess will be treated as capital gain and will be treated as described below in the section relating to the sale or disposition of our common stock.

## **Sale, Exchange or Other Disposition of Series B Preferred Stock and Common Stock**

Upon a sale, exchange, or other disposition of our Series B Preferred Stock (other than by conversion) or our common stock, a U.S. holder generally will recognize capital gain or loss equal to the difference between the amount realized (not including any amount attributable to declared and unpaid dividends, which will be taxable as described above to U.S. holders of record who have not previously included such dividends in income) and the U.S. holder's adjusted tax basis in our Series B Preferred Stock or our common stock. The U.S. holder's adjusted tax basis in our Series B Preferred Stock generally will equal its cost for the Series B Preferred stock, reduced by the amount of any cash distributions treated as a return of capital as described above. A U.S. holder's adjusted tax basis in our common stock generally will equal its initial tax basis in our common stock (discussed below under "—Conversion of the Series B Preferred Stock into Our Common Stock") reduced by the amount of any cash distributions treated as a return of capital as described above. Such capital gain or loss generally will be long-term capital gain or loss if the U.S. holder's holding period for our Series B Preferred Stock or our common stock exceeded one year at the time of disposition (see the discussion below under "—Conversion of Our Series B Preferred Stock into Our Common Stock" regarding a U.S. holder's holding period for our common stock). Long-term capital gains recognized by certain non-corporate U.S. Holders, including individuals, generally are subject to reduced rates of taxation. The deductibility of capital losses is subject to limitations.

## **Conversion of Our Series B Preferred Stock into Our Common Stock**

Generally, a U.S. holder will not recognize any gain or loss in respect of the receipt of our common stock upon the conversion of our Series B Preferred Stock. The adjusted tax basis of our common stock that a U.S. holder receives on conversion will equal the adjusted tax basis of the Series B Preferred Stock converted, and the holding period of such common stock received on conversion will include the period during which the U.S. holder held the Series B Preferred Stock prior to conversion.

In the event a U.S. holder's Series B Preferred Stock is converted pursuant to an election by such U.S. holder in the case of certain acquisitions or fundamental changes or pursuant to certain other transactions (including our consolidation or merger into another person), the tax treatment of such a conversion will depend upon the facts underlying the particular transaction triggering such a conversion. In this regard, it is possible that any related adjustments of the conversion rate would be treated as a constructive distribution to the U.S. holder as described below under "—Tax Consequences Applicable to U.S. Holders— Constructive Dividends on Series B Preferred Stock." U.S. holders should consult their own tax advisors to determine the specific tax treatment of a conversion under such circumstances.

## **Constructive Dividends on Series B Preferred Stock**

The conversion rate of our Series B Preferred Stock is subject to adjustment under certain circumstances, as described above under “Description of Securities—Series B Preferred Stock.” Section 305(c) of the Code and Treasury regulations thereunder will treat a U.S. holder of our Series B Preferred Stock as having received a constructive distribution includable in such U.S. holder’s income in the manner as described above under “—Tax Consequences Applicable to U.S. Holders — Distributions on Series B Preferred Stock and Common Stock,” if and to the extent that certain adjustments in the conversion rate (or failures to make such an adjustment) increase the proportionate interest of such U.S. holder in our earnings and profits. For example, an increase in the conversion rate to reflect a taxable dividend to holders of our common stock or an increase in the conversion rate upon certain events as described above will generally give rise to a deemed taxable dividend to the holders of our Series B Preferred Stock to the extent of our current or accumulated earnings and profits. In certain other circumstances, an adjustment to the conversion rate of our Series B Preferred Stock or a failure to make such an adjustment could potentially give rise to constructive distributions to U.S. holders of our common stock. Thus, under certain circumstances, U.S. holders may recognize income in the event of a constructive distribution even though they may not receive any cash or property. Certain adjustments to the conversion rate made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing dilution in the interest of the U.S. holders of our Series B Preferred Stock will generally not be considered to result in a constructive distribution. In the event the Stockholder Approval is not obtained, the treatment of the resulting cumulative dividends that are not paid in cash is not entirely clear. A U.S. holder may be required to include in income such cumulative dividends as constructive dividends even though they are not paid in cash. U.S. holders should consult their tax advisors regarding the proper treatment of the cumulative dividends.

## **Information Reporting and Backup Withholding**

A U.S. holder may be subject to information reporting and backup withholding when such holder receives dividend payments (including constructive dividends) or receives proceeds from the sale or other taxable disposition of the Warrants, shares of our Series B Preferred Stock acquired through the exercise of Subscription Rights or shares of our common stock acquired through conversion of our Series B Preferred Stock or exercise of the Warrants. Certain U.S. holders are exempt from backup withholding, including corporations and certain tax-exempt organizations. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and such holder:

- fails to furnish the holder’s taxpayer identification number, which for an individual is ordinarily his or her social security number;
- furnishes an incorrect taxpayer identification number;
- is notified by the IRS that the holder previously failed to properly report payments of interest or dividends; or
- fails to certify under penalties of perjury that the holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that the holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder’s U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

## **Tax Considerations Applicable to Non-U.S. Holders**

For purposes of this discussion, a “non-U.S. holder” is a beneficial owner of the Subscription Rights, shares of our Series B Preferred Stock, Warrants or shares of our common stock that is neither a U.S. holder nor an entity treated as a partnership for U.S. federal income tax purposes.

## **Receipt, Exercise and Expiration of the Subscription Rights**

The discussion assumes that the receipt of Subscription Rights will be treated as a nontaxable distribution. See “— Tax Consequences Applicable to U.S. Holders – Receipts of Subscription Rights” above. Non-U.S. holders will not be subject to U.S. federal income tax (or any withholding thereof) on the receipt, exercise or expiration of the Subscription Rights.

## **Exercise of Warrants**

A non-U.S. holder generally will not be subject to U.S. federal income tax on the exercise of Warrants into shares of our common stock. However, if a cashless exercise of the Warrants results in a taxable exchange, as described in “— Tax Considerations Applicable to U.S. holders — Sale or Other Disposition, Exercise or Expiration of Warrants,” the rules described below under “Sale or Other Disposition of Series B Preferred Stock, Common Stock or Warrants” would apply.

## **Constructive Dividends on Warrants**

As described in the section entitled “Dividend Policy,” we do not anticipate declaring or paying dividends to holders of our Series B Preferred Stock or common stock in the foreseeable future. However, if at any time during the period in which a non-U.S. holder holds Warrants we were to pay a taxable dividend to our stockholders and, in accordance with the anti-dilution provisions of the Warrants, the exercise price of the Warrants were decreased, that decrease would be deemed to be the payment of a taxable dividend to a non-U.S. holder to the extent of our earnings and profits, notwithstanding the fact that such holder will not receive a cash payment. If the exercise price is adjusted in certain other circumstances (or in certain circumstances, there is a failure to make adjustments), such adjustments may also result in the deemed payment of a taxable dividend to a non-U.S. holder. Any resulting withholding tax attributable to deemed dividends may be collected from other amounts payable or distributable to the non-U.S. holder. Non-U.S. holders should consult their tax advisors regarding the proper treatment of any adjustments to the Warrants.

## **Distributions on Series B Preferred Stock and Common Stock**

As described in the section entitled “Dividend Policy,” we do not anticipate declaring or paying dividends to holders of our Series B Preferred Stock or common stock in the foreseeable future. However, if we do make distributions of cash or property on our Series B Preferred Stock or common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a non-U.S. holder’s adjusted tax basis in its Series B Preferred Stock or common stock, as the case may be, but not below zero. Any excess will be treated as capital gain and will be treated as described below in the section relating to the sale or disposition of our Series B Preferred Stock, our common stock or Warrants. Because we may not know the extent to which a distribution is a dividend for U.S. federal income tax purposes at the time it is made, for purposes of the withholding rules discussed below we or the applicable withholding agent may treat the entire distribution as a dividend.

Subject to the discussion below on backup withholding and foreign accounts, dividends paid to a non- U.S. holder of our Series B Preferred Stock or common stock that are not effectively connected with the non-U.S. holder’s conduct of a trade or business within the United States will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty).

Non-U.S. holders will be entitled to a reduction in or an exemption from withholding on dividends as a result of either (a) an applicable income tax treaty or (b) the non-U.S. holder holding our Series B Preferred Stock or common stock in connection with the conduct of a trade or business within the United States and dividends being effectively connected with that trade or business. To claim such a reduction in or exemption from withholding, the non-U.S. holder must provide the applicable withholding agent with a properly executed (a) IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) claiming an exemption from or reduction of the withholding tax under the benefit of an income tax treaty between the United States and the country in which the non-U.S. holder resides or is established, or (b) IRS Form W-8ECI stating that the dividends are not subject to withholding tax because they are effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States, as may be applicable. These certifications must be provided to the applicable withholding agent prior to the payment of dividends and must be updated periodically. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If dividends paid to a non-U.S. holder are effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), then, although exempt from U.S. federal withholding tax (provided the non-U.S. holder provides appropriate certification, as described above), the non-U.S. holder will be subject to U.S. federal income tax on such dividends on a net income basis at the regular graduated U.S. federal income tax rates. In addition, a non-U.S. holder that is a corporation may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on its effectively connected earnings and profits for the taxable year that are attributable to such dividends, as adjusted for certain items. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

### **Sale or Other Disposition of Series B Preferred Stock, Common Stock or Warrants**

Subject to the discussions below on backup withholding and foreign accounts, a non-U.S. holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our Series B Preferred Stock, Warrants or our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable);
- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our Series B Preferred Stock, Warrants or our common stock constitutes a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on any gain derived from the disposition, which may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we are not currently and do not anticipate becoming a USRPHC. Because the determination of whether we are a USRPHC depends on the fair market value of our USRPIs relative to the fair market value of our other business assets and our non-U.S. real property interests, however, there can be no assurance we are not a USRPHC or will not become one in the future.

Non-U.S. holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

### **Conversion of Our Series B Preferred Stock into Our Common Stock**

A non-U.S. holder generally will not recognize any gain or loss in respect of the receipt of our common stock upon the conversion of our Series B Preferred Stock.

### **Constructive Dividends on Series B Preferred Stock**

As described above under “— Tax Consequences Applicable to U.S. Holders — Constructive Dividends on Series B Preferred Stock,” in certain circumstances, a non-U.S. holder will be deemed to receive a constructive distribution from us. Adjustments in the conversion rate (or failures to adjust the conversion rate) that increase the proportionate interest of a non-U.S. holder in our earnings and profits could result in deemed distributions to the non-U.S. holder that are treated as dividends for U.S. federal income tax purposes. Any constructive dividend deemed paid to a non-U.S. holder will be subject to U.S. federal income tax or withholding tax in the manner described above under “— Tax Consequences Applicable to Non-U.S. Holders — Distributions on Series B Preferred Stock and Common Stock.” It is possible that U.S. federal tax on the constructive dividend would be withheld, if applicable, from subsequent payments on the Series B Preferred Stock or our common stock. As discussed above, in the event the Stockholder Approval is not obtained, the resulting cumulative dividends may also result in constructive dividends even if they are not paid in cash. Non-U.S. holders should consult their tax advisors regarding the proper treatment of the cumulative dividends.

### **Information Reporting and Backup Withholding**

Subject to the discussion below on foreign accounts, a non-U.S. holder will not be subject to backup withholding with respect to distributions on our Series B Preferred Stock or common stock we make to the non-U.S. holder, provided the applicable withholding agent does not have actual knowledge or reason to know such holder is a United States person and the holder certifies its non-U.S. status, such as by providing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or other applicable certification. However, information returns generally will be filed with the IRS in connection with any distributions (including deemed distributions) made on our Series B Preferred Stock, Warrants and our common stock to the non-U.S. holder, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the non-U.S. holder resides or is established.

Information reporting and backup withholding may apply to the proceeds of a sale or other taxable disposition of our Series B Preferred Stock, Warrants or our common stock within the United States, and information reporting may (although backup withholding generally will not) apply to the proceeds of a sale or other taxable disposition of our Series B Preferred Stock, Warrants or our common stock outside the United States conducted through certain U.S.-related financial intermediaries, in each case, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder on IRS Form W-8BEN or W-8BEN-E, or other applicable form (and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person) or such owner otherwise establishes an exemption. Proceeds of a disposition of our Series B Preferred Stock, Warrants or our common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

#### **Additional Withholding Tax on Payments Made to Foreign Accounts**

Withholding taxes may be imposed under the Foreign Account Tax Compliance Act, or FATCA, on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends (including deemed dividends) paid on our common stock or Warrants, or gross proceeds from the sale or other disposition of our Series B Preferred Stock, Warrants or our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends (including deemed dividends), and will apply to payments of gross proceeds from the sale or other disposition of our Series B Preferred Stock, Warrants or our common stock on or after January 1, 2019. Because we may not know the extent to which a distribution is a dividend for U.S. federal income tax purposes at the time it is made, for purposes of these withholding rules we or the applicable withholding agent may treat the entire distribution as a dividend. Prospective investors should consult their tax advisors regarding the potential application of these withholding provisions.

## DESCRIPTION OF SECURITIES

In this offering, we are offering for sale 10,000 Units, with each Unit consisting of one share of Series B Preferred Stock and 1,250 Warrants. Each Warrant will be exercisable for one share of our common stock. The shares of Series B Preferred Stock and Warrants comprising the units are immediately separable and will be issued separately, but will be purchased together in this offering. We are also registering the shares of common stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants. These securities are being issued pursuant to a dealer-manager agreement between us and the dealer-manager. You should review the dealer-manager agreement, certificate of designation for the Series B Preferred Stock and the form of Warrant, each filed as exhibits to the registration statement of which this prospectus is a part, for a complete description of the terms and conditions applicable to the Series B Preferred Stock and the Warrants. The following brief summary of the material terms and provisions of the Series B Preferred Stock and the Warrants is subject to, and qualified in its entirety by, the certificate of designation for the Series B Preferred Stock and the form of Warrant.

### **Preferred Stock**

We have 5,000,000 shares of authorized preferred stock, \$0.001 par value, 13,500 shares of which were issued and none of which were outstanding as of June 30, 2017. Of this amount, 13,500 shares have been designated Series A convertible preferred stock, none of which are outstanding as of June 30, 2017. Our board of directors is authorized, without action by our stockholders, to classify or reclassify any unissued portion of our authorized shares of preferred stock to provide for the issuance of shares of other classes or series, including preferred stock in one or more series. Our board of directors may fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of preferred stock, and the number of shares constituting any such series and the designation thereof, or any of them. Our board of directors may also increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

We will authorize the Series B Preferred Stock by filing a certificate of designation with the Secretary of State of the State of Delaware. The certificate of designation may be authorized by our board of directors without approval by our stockholders.

*Conversion.* Each share of Series B Preferred Stock will be convertible at our option or the option of the holder at any time, or automatically upon receipt of Shareholder Approval, into the number of shares of our common stock determined by dividing the \$1,000 stated value per share of the Series B Preferred Stock by a conversion price of \$0.40 per share; provided that, until we obtain Stockholder Approval, if the number of shares of common stock issuable upon the conversion of the total number of shares of Series B Preferred Stock issued in this offering is greater than 30,000,000, each holder will only be able to convert that number of shares of Series B Preferred Stock obtained by multiplying the shares of Series B Preferred Stock issued to such holder in this offering by the Pro Rata Conversion Percentage (rounded down to the nearest whole share). In addition, the conversion price per share is subject to adjustment for stock dividends, distributions, subdivisions, combinations, or reclassifications, and for certain dilutive issuances. Subject to limited exceptions, a holder of the Series B Preferred Stock will not have the right to convert any portion of the Series B Preferred Stock to the extent that, after giving effect to the conversion, the holder, together with its affiliates, would beneficially own in excess of 9.99% of the number of shares of our common stock outstanding immediately after giving effect to its conversion.



*Fundamental Transactions.* In the event we effect certain mergers, consolidations, sales of substantially all of our assets, tender or exchange offers, reclassifications or share exchanges in which our common stock is effectively converted into or exchanged for other securities, cash or property, we consummate a business combination in which another person acquires 50% of the outstanding shares of our common stock, or any person or group becomes the beneficial owner of 50% of the aggregate ordinary voting power represented by our issued and outstanding common stock, then, upon any subsequent conversion of the Series B Preferred Stock, the holders of the Series B Preferred Stock will have the right to receive any shares of the acquiring corporation or other consideration it would have been entitled to receive if it had been a holder of the number of shares of common stock then issuable upon conversion in full of the Series B Preferred Stock.

*Dividends.* If the Stockholder Approval is not obtained before the date that is six months after the closing of the Rights Offering, or Stockholder Approval Deadline, holders of the Series B Preferred Stock will be entitled to receive cumulative dividends until the date of the Stockholder Approval at the rate per share (as a percentage of the stated value per share) of 10% per annum, in cash; provided that such dividends will not be payable until such time as the Loan and Security Agreement is terminated or our secured lender consents to the payment of such dividends. In addition, no holder of the Series B Preferred Stock will be entitled to receive dividends on the number of its shares of Series B Preferred Stock calculated by multiplying the number of shares of Series B Preferred Stock purchased by such holder in the Rights Offering by the Pro Rata Conversion Percentage.

*Voting Rights.* Except as otherwise provided in the certificate of designation or as otherwise required by law, the Series B Preferred Stock has no voting rights.

*Liquidation Preference.* Upon our liquidation, dissolution or winding-up, whether voluntary or involuntary, holders of Series B Preferred Stock will be entitled to receive out of our assets, whether capital or surplus, an amount equal to the \$1,000 stated value per share for each share of Series B Preferred Stock before any distribution or payment shall be made to the holders of any junior securities.

*Redemption Rights.* We are not obligated to redeem or repurchase any shares of Series B Preferred Stock. Shares of Series B Preferred Stock are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous fund provisions.

## **Warrants**

### ***Warrants Included in Units Issuable in the Rights Offering***

The Warrants to be issued as a part of this Rights Offering will be designated as our “Series S” warrants. These Warrants will be separately transferable following their issuance and through their expiration 30 months from the date of issuance. Each Warrant will entitle the holder to purchase one share of common stock at an exercise price of \$0.48 per share from the date of issuance through its expiration. We intend to apply to have the Warrants listed for trading on NASDAQ, however, there is no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet the minimum listing criteria to be accepted for listing on NASDAQ. The common stock underlying the Warrants, upon issuance, will also be traded on NASDAQ under the symbol “CYTX.”

All Warrants that are purchased in the Rights Offering as part of the Units will be issued in book-entry, or uncertificated, form meaning that you will receive a DRS account statement from our transfer agent reflecting ownership of Warrants if you are a holder of record of shares or warrants. The Subscription Agent will arrange for the issuance of the Warrants as soon as practicable after the closing, which will occur as soon as practicable after the Rights Offering has expired but which may occur up to five business days thereafter. At closing, all prorating calculations and reductions contemplated by the terms of the Rights Offering will have been effected and payment to us for the subscribed-for Units will have cleared. If you hold your shares of common stock in the name of a bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the Warrants you purchased in the Rights Offering.

*Exercisability.* Each Warrant will be exercisable at any time and from time to time after the date the Stockholder Approval is obtained and will expire 30 months from the date of issuance. The Warrants will be exercisable, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice and payment in full for the number of shares of our common stock purchased upon such exercise, except in the case of a cashless exercise as discussed below.

*Cashless Exercise.* If at the time of exercise there is no effective registration statement registering, or the prospectus contained therein is not available for issuance of, the shares issuable upon exercise of the Warrant, the holder may exercise the Warrant on a cashless basis. When exercised on a cashless basis, a portion of the Warrant is cancelled in payment of the purchase price payable in respect of the number of shares of our common stock purchasable upon such exercise.

*Exercise Price.* Each Warrant represents the right to purchase one share of common stock at an exercise price of \$0.48 per share. In addition, the exercise price per share is subject to adjustment for stock dividends, distributions, subdivisions, combinations, or reclassifications, and for certain dilutive issuances. Subject to limited exceptions, a holder of Warrants will not have the right to exercise any portion of the Warrant to the extent that, after giving effect to the exercise, the holder, together with its affiliates, would beneficially own in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to its exercise.

*Transferability.* Subject to applicable laws and restrictions, a holder may transfer a Warrant upon surrender of the Warrant to us with a completed and signed assignment in the form attached to the Warrant. The transferring holder will be responsible for any tax that liability that may arise as a result of the transfer.

*Exchange Listing.* We intend to apply to list the Warrants on NASDAQ, although there is no assurance that a sufficient number of Subscription Rights will be exercised so that the Warrants will meet the minimum listing criteria to be accepted for listing on NASDAQ.

*Rights as Stockholder.* Except as set forth in the Warrant, the holder of a Warrant, solely in such holder's capacity as a holder of a Warrant, will not be entitled to vote, to receive dividends, or to any of the other rights of our stockholders.

*Redemption Rights.* We may redeem the Warrants for \$0.01 per Warrant if our common stock closes above \$1.20 per share for ten consecutive trading days, provided that we may not do so prior to the first anniversary of closing of the Rights Offering.

*Amendments and Waivers.* The provisions of each Warrant may be modified or amended or the provisions thereof waived with the written consent of us and the holder.

The Warrants will be issued pursuant to a warrant agent agreement by and between us and Broadridge Corporate Issuer Solutions, Inc., the warrant agent.

## **Common Stock**

This section describes the general terms and provisions of the shares of our common stock, \$0.001 par value. This description is only a summary and is qualified in its entirety by reference to the description of our common stock included in our amended and restated of incorporation, as amended, and our amended and restated bylaws, as amended, which have been filed as exhibits to the registration statement of which this prospectus is a part. You should read our amended and restated of incorporation and our amended and restated bylaws for additional information before you buy any of our common stock or other securities. See "Where You Can Find More Information" and "Incorporation by Reference."

We have 75,000,000 shares of authorized common stock. As of June 30, 2017, there were 33,328,401 shares of common stock issued and outstanding, warrants to purchase 3,659,504 shares of common stock outstanding, options to purchase 1,297,532 shares of common stock outstanding and 515 shares of common stock issuable upon vesting of restricted stock awards. The holders of common stock possess exclusive voting rights in us, except to the extent our board of directors specifies voting power with respect to any other class of securities issued in the future. Each holder of our common stock is entitled to one vote for each share held of record on each matter submitted to a vote of stockholders, including the election of directors. Stockholders do not have any right to cumulate votes in the election of directors.

Subject to preferences that may be granted to the holders of preferred stock, each holder of our common stock is entitled to share ratably in distributions to stockholders and to receive ratably such dividends as may be declared by our board of directors out of funds legally available therefor. In the event of our liquidation, dissolution or winding up, the holders of our common stock will be entitled to receive, after payment of all of our debts and liabilities and of all sums to which holders of any preferred stock may be entitled, the distribution of any of our remaining assets. Holders of our common stock have no conversion, exchange, sinking fund, redemption or appraisal rights (other than such as may be determined by our board of directors in its sole discretion) and have no preemptive rights to subscribe for any of our securities.

All of the outstanding shares of our common stock are, and the shares of common stock issued upon the conversion of any securities convertible into our common stock will be, fully paid and non-assessable. The shares of common stock offered by this prospectus or upon the conversion of any preferred stock or debt securities or exercise of any Warrants offered pursuant to this prospectus, when issued and paid for, will also be, fully paid and non-assessable.

Our common stock is listed on NASDAQ under the symbol “CYTX.”

### **Possible Anti-Takeover Effects of Delaware Law and our Certificate of Incorporation and Bylaws**

#### ***Delaware Anti-Takeover Statute***

We are subject to Section 203 of the DGCL, an anti-takeover statute. In general, Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the time the person became an interested stockholder, unless the business combination or the acquisition of shares that resulted in a stockholder becoming an interested stockholder is approved in a prescribed manner. Generally, a “business combination” includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns (or within three years prior to the determination of interested stockholder status did own) 15% or more of a corporation’s voting stock. The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by our stockholders.

#### ***Board Vacancies***

Our amended and restated bylaws provide that any vacancy or vacancies in our board of directors shall be deemed to exist in the case of the death, resignation or removal of any director, or if the authorized number of directors be increased. Vacancies may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, unless otherwise provided in our amended and restated of incorporation, as amended. The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

### ***Undesignated Preferred Stock***

The authority possessed by our board of directors to issue preferred stock could potentially be used to discourage attempts by third parties to obtain control of our company through a merger, tender offer, proxy contest or otherwise by making such attempts more difficult or more costly. Our board of directors may issue preferred stock with voting rights or conversion rights that, if exercised, could adversely affect the voting power of the holders of our common stock.

### ***Special Meeting Requirements***

Our amended and restated bylaws provide that special meetings of our stockholders may only be called at the request of our president, chief executive officer or chairman of the board or by a majority of our Board of Directors.

### ***No Cumulative Voting***

The DGCL provides that stockholders are denied the right to cumulate votes in the election of directors unless our amended and restated of incorporation, as amended, provides otherwise. Our amended and restated of incorporation does not provide for cumulative voting.

### ***Authorized but Unissued Shares***

Our authorized but unissued shares of common stock and preferred stock will be available for future issuance without stockholder approval. We may use additional shares for a variety of purposes, including future public offerings to raise additional capital, to fund acquisitions and as employee compensation. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

The above provisions may deter a hostile takeover or delay a change in control or management of us.

### **Transfer Agent**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

### **Warrant Agent**

The warrant agent for the Warrants is Broadridge Corporate Issuer Solutions, Inc.

## PLAN OF DISTRIBUTION

On or about November 1, 2017, we will distribute the Subscription Rights, Rights Certificates and copies of this prospectus to the holders of our common stock on the Record Date. Subscription Rights holders who wish to exercise their Subscription Rights and purchase Units must complete the Subscription Rights Certificate and return it with payment for the shares to the Subscription Agent at the following address:

*By mail:*

Broadridge Corporate Issuer Solutions, Inc.

Attn: BCIS Re-Organization Dept.  
P.O. Box 1317  
Brentwood, New York 11717-0693  
(855) 793-5068 (toll free)

*By hand or overnight courier:*

Broadridge Corporate Issuer Solutions, Inc.

Attn: BCIS IWS  
51 Mercedes Way  
Edgewood, New York 11717  
(855) 793-5068

If you have any questions, you should contact our Information Agent for the Rights Offering:

Broadridge Corporate Issuer Solutions, Inc.  
(855) 793-5068 (toll free)

Other than as described in this prospectus, we do not know of any existing agreements between any stockholder, broker, dealer, underwriter or agent relating to the sale or distribution of the underlying securities.

Maxim Group LLC is the dealer-manager of this Rights Offering. In such capacity, such dealer-manager will provide marketing assistance and financial advice (including determining the Subscription Price and the structure of the Rights Offering) to us in connection with this offering and will solicit the exercise of Subscription Rights and participation in the Over-Subscription Privilege. The dealer-manager will provide us with updated investor feedback and recommendations on pricing and structure through to the end of the subscription period. The dealer-manager is not underwriting or placing any of the Subscription Rights or the shares of our Series B Preferred Stock or Warrants being issued in this offering and does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares or Warrants.

In connection with this Rights Offering, we have agreed to pay fees to Maxim Group LLC as dealer-manager a cash fee equal to (i) 6% of the gross proceeds received by us directly from exercises of the Subscription Rights if the amount of such gross proceeds is less than \$7.5 million or (b) 7% of the gross proceeds received by us directly from exercises of the Subscription Rights if the amount of such gross proceeds is at least \$7.5 million. We advanced \$20,000 to Maxim Group LLC against reimbursement of accountable expenses upon their engagement as a dealer-manager, or the Advance, and agreed to reimburse the reasonable fees and expenses (including legal fees) of the dealer-manager up to \$75,000. Any portion of the Advance will be returned to us to the extent it is not actually incurred.

We have also agreed to indemnify the dealer-manager and its respective affiliates against certain liabilities arising under the Securities Act of 1933, as amended. The dealer-manager's participation in this offering is subject to customary conditions contained in the dealer-manager agreement, including the receipt by the dealer-manager of an opinion of our counsel. The dealer-manager and its affiliates may provide to us from time to time in the future in the ordinary course of their business certain financial advisory, investment banking and other services for which they will be entitled to receive fees.

Maxim Group LLC is a broker-dealer and member of the Financial Industry Regulatory Authority, Inc. The principal business address of Maxim Group LLC is 405 Lexington Avenue, New York, New York 10174.

## **EXPERTS**

The consolidated financial statements and schedule as of and for the year ended December 31, 2016 incorporated by reference in this prospectus and in the registration statement have been so incorporated in reliance on the report of BDO USA, LLP, an independent registered public accounting firm (the report on the consolidated financial statements and schedule contains an explanatory paragraph regarding the Company's ability to continue as a going concern), incorporated herein by reference, given on the authority of said firm as experts in auditing and accounting.

KPMG LLP, independent registered public accounting firm, has audited the consolidated financial statements as of and for the year ended December 31, 2015 included in our Annual Report on Form 10-K for the year ended December 31, 2016, as set forth in their report, which is incorporated herein by reference. Our financial statements are incorporated by reference in reliance on KPMG LLP's report, given on their authority as experts in accounting and auditing.

The audit report covering the December 31, 2015 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. The consolidated financial statements and financial statement schedule do not include any adjustments that might result from the outcome of that uncertainty.

We have agreed to indemnify and hold KPMG LLP harmless against and from any and all legal costs and expenses incurred by KPMG in successful defense of any legal action or proceeding that arises as a result of KPMG's consent to the incorporation by reference of its audit report on the Company's past financial statements incorporated herein by reference.

## **LEGAL MATTERS**

The validity of the securities offered hereby will be passed upon for us by Latham & Watkins LLP, San Diego, California. The dealer-manager is being represented by Ellenoff Grossman & Schole LLP, New York, New York.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-1 with the SEC under the Securities Act of 1933, as amended. This prospectus is part of the registration statement but the registration statement includes additional information and exhibits. We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy the registration statement and any document we file with the SEC at the public reference room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains a web site that contains reports, proxy and information statements and other information regarding companies, such as ours, that file documents electronically with the SEC. The website address is [www.sec.gov](http://www.sec.gov). The information on the SEC's website is not part of this prospectus, and any references to this website or any other website are inactive textual references only.

## INCORPORATION BY REFERENCE

The SEC permits us to "incorporate by reference" the information contained in documents we have filed with the SEC, which means that we can disclose important information to you by referring you to those documents rather than by including them in this prospectus. Information that is incorporated by reference is considered to be part of this prospectus and you should read it with the same care that you read this prospectus. We have filed with the SEC, and incorporate by reference in this prospectus:

- our Annual Report on Form 10-K for the year ended December 31, 2016;
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017 and June 30, 2017, filed on May 12, 2017 and August 11, 2017, respectively;
- our definitive proxy statement filed on April 10, 2017;
- our Current Reports on Form 8-K or 8-K/A filed on January 19, 2017, February 15, 2017, March 3, 2017, April 5, 2017, April 10, 2017, April 12, 2017, May 22, 2017, May 31, 2017, June 16, 2017, July 24, 2017, September 5, 2017, September 8, 2017 and September 21, 2017; and
- the description of our common stock contained in our registration statement on Form 10/A filed with the SEC on July 16, 2001 (File No. 000-32501).

Any statement contained in any document incorporated by reference herein will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any additional prospectus supplements modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any information furnished to, rather than filed with, the SEC, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon written or oral request, a copy of any or all documents that are incorporated by reference into this prospectus, but not delivered with the prospectus, other than exhibits to such documents unless such exhibits are specifically incorporated by reference into the documents that this prospectus incorporates. You should direct written requests to: Cytori Therapeutics, Inc., 3020 Callan Road, San Diego, CA 92121, Attn: Investor Relations, or you may call us at (858) 458-0900.

PROSPECTUS

Subscription Rights to Purchase Up to 10,000 Units  
Consisting of an Aggregate of Up to 10,000 Shares of Series B Preferred Stock  
and Warrants to Purchase Up to 12,500,000 Shares of Common Stock  
at a Subscription Price of \$1,000 Per Unit

*Dealer-Manager*  
**Maxim Group LLC**

, 2017



## PART II

### Information Not Required In Prospectus

#### Item 13. Other Expenses of Issuance and Distribution.

The following is a statement of estimated expenses in connection with the issuance and distribution of the securities being registered, excluding dealer-manager fees. All expenses incurred with respect to the registration of the common stock will be borne by us. All amounts are estimates except the SEC registration fee and the FINRA filing fee.

	<b>Amount to be Paid</b>
SEC Registration Fee	\$ 1,992
FINRA Filing Fee	2,900
Printing Expenses	10,000
Legal Fees and Expenses	150,000
Accounting Fees and Expenses	50,000
Subscription Agent, Information Agent and Warrant Agent Fees and Expenses	50,000
Miscellaneous Expenses	30,000
Total	<u>\$ 294,892</u>

#### Item 14. Indemnification of Directors and Officers.

Section 145 of the DGCL authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended, or the Securities Act.

Our amended and restated certificate of incorporation, as amended (our "Certificate"), includes a provision that, to the fullest extent permitted by the Delaware General Corporation Law, eliminates the personal liability of our directors for monetary damages for breach of fiduciary duty as a director. In addition, together our Certificate and our amended and restated bylaws, as amended (our "Bylaws"), require us to indemnify, to the fullest extent permitted by law, any person made or threatened to be made a party to an action or proceeding (whether criminal, civil, administrative or investigative) by reason of the fact that such person is or was a director, officer or employee of Cytori or any predecessor of ours, or serves or served at any other enterprise as a director, officer or employee at our request or the request of any predecessor of ours, against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of ours. Our Bylaws also provide that we may, to the fullest extent provided by law, indemnify any person against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of ours. We are required to advance expenses incurred by our directors, officers, employees and agents in defending any action or proceeding for which indemnification is required or permitted, subject to certain limited exceptions. The indemnification rights conferred by our Bylaws are not exclusive.

**Item 15. Recent Sales of Unregistered Securities.**

The following is a summary of all securities that we have sold within the past three years without registration under the Securities Act of 1933, as amended (the "Securities Act").

- On September 11, 2014, in connection with and pursuant to an amendment entered into on September 4, 2014 with 13 holders of existing warrants, we issued warrants to purchase 268,826 shares of common stock having an exercise price of \$30.00 per share, exercisable on the date that is six months and one day from the date of issuance and expiring five years from the date of issuance. The warrants also contain a cashless exercise feature. The warrants were issued in reliance on an exemption from registration under the Securities Act pursuant to Section 4(a)(2) thereof based on the offering of such securities to thirteen investors and the lack of any general solicitation or advertising in connection with such issuance.
- On September 19, 2014, pursuant to the terms and conditions of a letter agreement with Oxford Finance LLC and Silicon Valley Bank, we cancelled the warrants issued June 28, 2013 and issued new warrants to purchase an aggregate of up to 39,771 shares of our common stock at an exercise price equal to \$10.05 per share. The warrants were immediately exercisable for cash or by net exercise and will expire seven years after their issuance, which is June 28, 2020. The warrants were offered and sold to accredited investors in reliance upon exemptions from registration under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.
- On May 29, 2015, pursuant to the terms and conditions of the Loan and Security Agreement with Oxford Finance LLC, as collateral agent and as a lender, we issued to Oxford warrants to purchase an aggregate of up to 94,442 shares of our common stock at an exercise price equal to \$10.305 per share. The warrants were exercisable on or after November 30, 2015 for cash or by net exercise and will expire 10 years after their issuance on May 29, 2025. The warrants were offered and sold to accredited investors in reliance upon exemptions from registration under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.
- On December 22, 2016, we issued 127,491 shares of common stock to Lincoln Park Capital Fund, LLC as an initial fee for its commitment to purchase shares of our common stock pursuant to the Purchase Agreement dated December 22, 2016 between us and Lincoln Park Capital Fund, LLC. The shares were issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act.
- On February 15, 2017, pursuant to the terms and conditions of an Asset Purchase Agreement with Azaya Therapeutics, Inc., or Azaya, we issued 1,173,241 shares of common stock to Azaya, 293,310 of which were deposited into a 15-month escrow. The shares were issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act.
- On April 17, 2017 and May 31, 2017, pursuant to the terms and conditions of an Underwriting Agreement with Maxim Group LLC, or Maxim, we issued warrants to purchase 86,000 shares and 8,490 shares, respectively, of common stock to Maxim. The shares were issued in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act.

**Item 16. Exhibits and Financial Statement Schedules.**

(a) Exhibits

The exhibits to the registration statement are listed in the Exhibit Index to this registration statement and are incorporated herein by reference.

(b) Financial statement schedules

All schedules have been omitted because either they are not required, are not applicable or the information is otherwise set forth in the financial statements and related notes thereto.

**Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.; *provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement or prospectus with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(7) The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

(8) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to any charter provision, by law or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(9) The undersigned registrant hereby undertakes that:

(i) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(ii) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## EXHIBIT INDEX

## CYTORI THERAPEUTICS, INC.

Exhibit Number	Exhibit Title	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
1.1	<a href="#">Form of Dealer-Manager Agreement by and between Cytori Therapeutics, Inc. and Maxim Group LLC.</a>	X			
3.1	<a href="#">Composite Certificate of Incorporation.</a>		10-K	000-32501 Exhibit 3.1	03/11/2016
3.2	<a href="#">Amended and Restated Bylaws of Cytori Therapeutics, Inc.</a>		10-Q	000-32501 Exhibit 3.2	08/14/2003
3.3	<a href="#">Amendment to Amended and Restated Bylaws of Cytori Therapeutics, Inc.</a>		8-K	001-34375 Exhibit 3.1	05/06/2014
3.4	<a href="#">Certificate of Designation of Preferences, Rights and Limitations of Series A 3.6% Convertible Preferred Stock</a>		8-K	001-34375 Exhibit 3.1	10/08/2014
3.5	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation, as amended</a>		8-K	001-34375 Exhibit 3.1	05/10/2016
3.6	<a href="#">Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock.</a>	X			
4.1	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on October 14, 2008 in favor of Silicon Valley Bank, pursuant to the Loan and Security Agreement dated October 14, 2008.</a>		10-K	000-32501 Exhibit 10.62	03/06/2009
4.2	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. 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.</a>		8-K	001-34375 Exhibit 10.73	06/17/2010
4.3	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 11, 2010 in favor of Silicon Valley Bank, pursuant to the Amended and Restated Loan and Security Agreement dated June 11, 2010.</a>		8-K	001-34375 Exhibit 10.74	06/17/2010
4.4	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 11, 2010 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated June 11, 2010.</a>		8-K	001-34375 Exhibit 10.75	06/17/2010

4.5	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. 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.</a>		8-K	001-34375 Exhibit 10.84	09/15/2011
4.6	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on September 9, 2011 in favor of Silicon Valley Bank, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.</a>		8-K	001-34375 Exhibit 10.85	09/15/2011
4.7	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on September 9, 2011 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.</a>		8-K	001-34375 Exhibit 10.86	09/15/2011
4.8	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on September 9, 2011 in favor of Oxford Financial Corporation, pursuant to the Amended and Restated Loan and Security Agreement dated September 9, 2011.</a>		8-K	001-34375 Exhibit 10.87	09/15/2011
4.9	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013.</a>		10-Q	001-34375 Exhibit 4.17	08/09/2013
4.10	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013.</a>		10-Q	001-34375 Exhibit 4.18	08/09/2013
4.11	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013.</a>		10-Q	001-34375 Exhibit 4.19	08/09/2013
4.12	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 28, 2013 in favor of Oxford Finance LLC pursuant to the Loan and Security Agreement dated June 28, 2013.</a>		10-Q	001-34375 Exhibit 4.20	08/09/2013

4.13	<a href="#">Warrant to Purchase Common Stock issued by Cytori Therapeutics, Inc. on June 28, 2013 in favor of Silicon Valley Bank pursuant to the Loan and Security Agreement dated June 28, 2013.</a>		10-Q	001-34375 Exhibit 4.21	08/09/2013
4.14	<a href="#">Form of Warrant to Purchase Common Stock for Investors in the Units issued in May 2014.</a>		8-K	001-34375 Exhibit 4.1	05/30/2014
4.15	<a href="#">Form of Warrant to Purchase Common Stock for Placement Agent of the Units issued in May 2014.</a>		8-K	001-34375 Exhibit 4.2	05/30/2014
4.16	<a href="#">Form of Amendment to Warrant to Purchase Common Stock.</a>		8-K	001-34375 Exhibit 4.1	09/08/2014
4.17	<a href="#">Form of Warrant to Purchase Common Stock.</a>		8-K	001-34375 Exhibit 4.2	09/08/2014
4.18	<a href="#">Form of Warrant for Purchasers of the Units issued in October 2014.</a>		8-K	001-34375 Exhibit 4.1	10/08/2014
4.19	<a href="#">Form of Initial Warrant to Purchase Common Stock.</a>		8-K	001-34375 Exhibit 4.1	05/05/2015
4.20	<a href="#">Form of Additional Warrant to Purchase Common Stock.</a>		8-K	001-34375 Exhibit 4.2	05/05/2015
4.21	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock.</a>		8-K	001-34375 Exhibit 4.3	05/05/2015
4.22	<a href="#">Amendment to Common Stock Purchase Warrant.</a>		10-K	001-34375 Exhibit 4.23	03/11/2016
4.23	<a href="#">Amendment to Series A-1 Warrant to Purchase Common Stock.</a>		10-K	001-34375 Exhibit 4.24	03/11/2016
4.24	<a href="#">Amendment to Series A-2 Warrant to Purchase Common Stock.</a>		10-K	001-34375 Exhibit 4.25	03/11/2016
4.25	<a href="#">Form of Non-Transferable Subscription Rights Certificate issued in 2016.</a>		S-1/A	333-210628 Exhibit 4.26	05/11/2016
4.26	<a href="#">Form of Series R Warrant.</a>		S-1/A	333-210628 Exhibit 4.27	05/11/2016



4.27	<a href="#">Form of Series S Warrant.</a>	X			
4.28	<a href="#">Form of Warrant Agent Agreement between Cytori Therapeutics, Inc. and Broadridge Corporate Issuer Solutions, Inc.</a>		S-1/A	333-210628 Exhibit 4.28	05/11/2016
4.29	<a href="#">Form of Warrant by and between Cytori Therapeutics, Inc. and Maxim Group LLC.</a>		8-K	000-32501 Exhibit 4.1	04/12/2017
4.30	<a href="#">Form of Restated Warrant by and between Cytori Therapeutics, Inc. and Broadridge Corporate Issuer Solutions, Inc.</a>		10-Q	001-34375 Exhibit 4.2	08/11/2017
4.31	<a href="#">Form of Non-Transferable Subscription Rights Certificate.</a>	X			
4.32	<a href="#">Form of Warrant Agent Agreement between Cytori Therapeutics, Inc. and Broadridge Corporate Issuer Solutions, Inc.</a>	X			
5.1	<a href="#">Opinion of Latham &amp; Watkins LLP.</a>	X			
8.1	<a href="#">Tax opinion of Latham &amp; Watkins LLP.</a>	X			
10.1#	<a href="#">Amended and Restated 1997 Stock Option and Stock Purchase Plan.</a>		10-K	000-32501 Exhibit 10.1	03/30/2001
10.2#	<a href="#">2004 Equity Incentive Plan of Cytori Therapeutics, Inc.</a>		8-K	000-32501 Exhibit 10.1	08/27/2004
10.3#	<a href="#">Form of Options Exercise and Stock Purchase Agreement Relating to the 2004 Equity Incentive Plan.</a>		10-Q	000-32501 Exhibit 10.23	11/15/2004
10.4#	<a href="#">Form of Notice of Stock Options Grant Relating to the 2004 Equity Incentive Plan.</a>		10-Q	000-32501 Exhibit 10.24	11/15/2004
10.5+	<a href="#">License &amp; Royalty Agreement, effective August 23, 2007, by and between Olympus-Cytori, Inc. and Cytori Therapeutics, Inc.</a>		10-Q	000-32501 Exhibit 10.49	11/13/2007
10.6	<a href="#">Common Stock Purchase Agreement, dated March 28, 2007, by and between Cytori Therapeutics, Inc. and Green Hospital Supply, Inc.</a>		10-Q	000-32501 Exhibit 10.46	05/11/2007
10.7	<a href="#">Common Stock Purchase Agreement, dated February 8, 2008, by and between Green Hospital Supply, Inc. and Cytori Therapeutics, Inc.</a>		8-K	000-32501 Exhibit 10.51	2/19/2008

10.8	<a href="#">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.</a>		8-K	000-32501 Exhibit 10.51	2/29/2008
10.9	<a href="#">Lease Agreement entered into on April 2, 2010, between HCP Callan Rd, LLC. Aand Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.69	05/06/2010
10.10	<a href="#">Common Stock Purchase Agreement, dated December 6, 2010, by and among Cytori Therapeutics, Inc. and Astellas Pharma Inc.</a>		8-K	001-34375 Exhibit 10.76	12/09/2010
10.11#	<a href="#">Form of Notice and Restricted Stock Award Agreement for grants of performance-based restricted stock awards under the 2004 Equity Incentive Plan.</a>		8-K	001-34375 Exhibit 10.1	03/04/2011
10.12	<a href="#">First Amendment to Lease Agreement entered into on November 4, 2011, between HCP Callan Rd, LLC. aAnd Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.88	11/08/2011
10.13#	<a href="#">2011 Employee Stock Purchase Plan.</a>		DEF 14A	001-34375 Appendix A	05/02/2011
10.14	<a href="#">Contract HHSO100201200008C dated September 27, 2012, by and between Cytori Therapeutics, Inc. and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority.</a>	X			
10.15	<a href="#">Joint Venture Termination Agreement dated May 8, 2013 by and between Cytori Therapeutics, Inc. and Olympus Corporation.</a>		10-Q	001-34375 Exhibit 10.91	05/10/2013
10.16+	<a href="#">Puregraft Sale-License-Supply Agreement, dated July 30, 2013, by and between Cytori Therapeutics, Inc. and Bimini Technologies LLC.</a>		10-Q/A	001-34375 Exhibit 10.93	11/12/2013
10.17+	<a href="#">Amended and Restated License and Supply Agreement dated January 30, 2014, by and between Cytori Therapeutics, Inc. and Lorem Vascular Pty. Ltd.</a>		8-K	001-34375 Exhibit 10.94	02/04/2014
10.18	<a href="#">Sales Agreement, dated May 12, 2014, by and between Cytori Therapeutics, Inc. and Cowen and Company, LLC.</a>		8-K	001-34375 Exhibit 10.1	05/12/2014

10.19	<a href="#">Contract HHSO100201200008C Amendment No. 1 dated August 18, 2014, by and between Cytori Therapeutics, Inc. and the U.S. Department of Health and Human Services Biomedical Advanced Research and Development Authority.</a>		8-K	001-34375 Exhibit 10.99	08/19/2014
10.20	<a href="#">Form of Securities Purchase Agreement by and between Cytori Therapeutics, Inc. and the Purchasers (as defined therein), dated as of October 8, 2014.</a>		8-K	001-34375 Exhibit 10.1	10/08/2014
10.21	<a href="#">Amendment of Solicitation/Amendment of Contract, effective December 17, 2014, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-K	001-34375 Exhibit 10.21	03/24/2017
10.22	<a href="#">Amendment of Solicitation/Modification of Contract, effective January 5, 2015, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-K	001-34375 Exhibit 10.22	03/24/2017
10.23	<a href="#">Amendment One to the Securities Purchase Agreement, dated March 16, 2015, between Cytori Therapeutics, Inc. and certain institutional investors.</a>		10-Q	001-34375 Exhibit 10.1	05/11/2015
10.24	<a href="#">Form of Securities Purchase Agreement, dated May 5, 2015, by and among Cytori Therapeutics, Inc. and the investors named therein.</a>		8-K	001-34375 Exhibit 10.1	05/05/2015
10.25	<a href="#">Placement Agency Agreement, dated May 5, 2015, by and between Cytori Therapeutics, Inc. and Mizuho Securities USA Inc.</a>		8-K	001-34375 Exhibit 10.2	05/05/2015
10.26	<a href="#">Amendment One to Joint Venture Termination Agreement, dated April 30, 2015, by and between Cytori Therapeutics, Inc. and Olympus Corporation.</a>		8-K	001-34375 Exhibit 10.1	05/05/2015
10.27	<a href="#">Loan and Security Agreement, dated May 29, 2015, by and between Cytori Therapeutics, Inc. and Oxford Finance, LLC.</a>		10-Q	001-34375 Exhibit 10.4	08/10/2015
10.28	<a href="#">Amendment One to the Securities Purchase Agreement between Cytori Therapeutics, Inc. and certain institutional investors dated May 5, 2015.</a>		10-K	001-34375 Exhibit 10.111	03/11/2016
10.29#	<a href="#">2015 New Employee Incentive Plan.</a>		8-K	001-34375 Exhibit 10.1	01/05/2016
10.30#	<a href="#">Form of Agreement for Acceleration and/or Severance.</a>		10-K	001-34375 Exhibit 10.113#	03/11/2016

10.31#	<a href="#">Form of Stock Option Agreement under the New Employee Incentive Plan.</a>		S-8	333-210211 Exhibit 99.4	03/15/2016
10.32#	<a href="#">Form of Notice of Grant of Stock Option under the 2015 New Employee Incentive Plan.</a>		S-8	333-210211 Exhibit 99.5	03/15/2016
10.33#	<a href="#">2014 Equity Incentive Plan of Cytori Therapeutics, Inc., as amended and restated.</a>		DEF 14A	001-34375 Appendix A	04/10/2017
10.34	<a href="#">Amendment Two to Joint Venture Termination Agreement, dated January 8, 2016.</a>		10-Q	001-34375 Exhibit 10.4	05/10/2016
10.35	<a href="#">Amendment of Solicitation/Amendment of Contract, effective April 1, 2016, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.1	08/05/2016
10.36	<a href="#">Amendment of Solicitation/Amendment of Contract, effective September 9, 2016, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.1	11/09/2016
10.37	<a href="#">Purchase Agreement between Cytori Therapeutics, Inc. and Lincoln Park Capital Fund, LLC, dated December 22, 2016.</a>		8-K	001-34375 Exhibit 10.1	12/29/2016
10.38	<a href="#">Registration Rights Agreement between Cytori Therapeutics, Inc. and Lincoln Park Capital Fund, LLC, dated December 22, 2016.</a>		8-K	001-34375 Exhibit 10.2	12/29/2016
10.39+	<a href="#">Asset Purchase Agreement by and between Cytori Therapeutics, Inc. and Azaya Therapeutics, Inc., effective January 16, 2017.</a>		10-K	001-34375 Exhibit 10.40	03/24/2017
10.40	<a href="#">Lease Agreement, dated February 27, 2017, by and between 6262 Lusk Investors LLC and Cytori Therapeutics, Inc.</a>		10-K	001-34375 Exhibit 10.41	03/24/2017
10.41#	<a href="#">First Amendment to the Cytori Therapeutics, Inc. 2015 New Employee Incentive Plan, dated Jan. 26, 2017.</a>		10-K	001-34375 Exhibit 10.42	03/24/2017
10.42	<a href="#">Sixth Amendment of Solicitation/Modification of Contract, effective April 14, 2017, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.1	05/12/2017
10.43+	<a href="#">Seventh Amendment of Solicitation/Modification of Contract, effective May 19, 2017, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.3	08/11/2017

10.44+	<a href="#">Eighth Amendment of Solicitation/Modification of Contract, effective May 23, 2017, by and between ASPR-BARDA and Cytori Therapeutics, Inc.</a>		10-Q	001-34375 Exhibit 10.4	08/11/2017
10.45	<a href="#">First Amendment to Loan and Security Agreement, dated September 20, 2017, by and between Cytori Therapeutics, Inc. and Oxford Finance, LLC.</a>	X			
23.1	<a href="#">Consent of BDO USA, LLP, Independent Registered Public Accounting Firm.</a>	X			
23.2	<a href="#">Consent of KPMG, LLP, Independent Registered Public Accounting Firm.</a>	X			
23.3	<a href="#">Consent of Latham &amp; Watkins LLP (included in Exhibit 5.1).</a>	X			
24.1	<a href="#">Power of Attorney (included on signature page).</a>		S-1	333-219967 Exhibit 24.1	08/14/2017
99.1	<a href="#">Form of Instructions as to Use of Subscription Rights Certificates.</a>	X			
99.2	<a href="#">Form of Letter to Sharestockholders who are Record Holders.</a>	X			
99.3	<a href="#">Form of Letter to Brokers, Dealers, Banks and Other Nominees.</a>	X			
99.4	<a href="#">Form of Broker Letter to Clients Who are Beneficial Holders.</a>	X			
99.5	<a href="#">Form of Beneficial Owner Election Form.</a>	X			
99.6	<a href="#">Form of Nominee Holder Certification.</a>	X			
99.7	<a href="#">Form of Notice of Important Tax Information.</a>	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.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on October 2, 2017.

CYTORI THERAPEUTICS, INC.

By: /s/ Marc H. Hedrick, M.D.  
Marc H. Hedrick, M.D.  
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>*</u> David M. Rickey	Chairman of the Board	October 2, 2017
<u>/s/ Marc H. Hedrick, M.D.</u> Marc H. Hedrick, M.D.	President & Chief Executive Officer (Principal Executive Officer)	October 2, 2017
<u>/s/ Tiago Girão</u> Tiago Girão	VP of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	October 2, 2017
<u>*</u> Richard J. Hawkins	Director	October 2, 2017
<u>*</u> Gregg A. Lapointe	Director	October 2, 2017
<u>*</u> Gary A. Lyons	Director	October 2, 2017
<u>*</u> Ronald A. Martell	Director	October 2, 2017
<u>*</u> Gail K. Naughton, Ph.D.	Director	October 2, 2017
<u>*By: /s/ Tiago Girão</u> Tiago Girão Attorney-in-fact		

**FORM OF**  
**CYTORI THERAPEUTICS, INC.**  
**DEALER-MANAGER AGREEMENT**

\_\_\_\_\_, 2017

Maxim Group LLC  
405 Lexington Avenue  
New York, NY 10174  
*As Dealer-Manager*

Ladies and Gentlemen:

The following will confirm our agreement relating to the proposed rights offering (the “**Rights Offering**”) to be undertaken by Cytori Therapeutics, Inc., a Delaware corporation (the “**Company**”), pursuant to which the Company will distribute to holders of record of its common stock, par value \$0.001 per share (the “**Common Stock**”), subscription rights (the “**Rights**”) to subscribe for up to an aggregate of \_\_\_\_\_ units (the “**Units**”), each Unit consisting of one share of Preferred Stock (the “**Rights Shares**”) and \_\_\_\_\_ warrants, with each warrant representing the right to purchase one share of Common Stock (the “**Rights Warrants**”), at a subscription price of \$\_\_\_ per Right in cash (the “**Subscription Price**”).

1. The Rights Offering.

(a) The Company proposes to undertake the Rights Offering pursuant to which each holder of Common Stock shall receive one Right for each share of Common Stock held of record at the close of business on \_\_\_\_, 2017 (the “**Record Date**”). Holders of Rights will be entitled to subscribe for and purchase, at the Subscription Price, one (1) Rights Share and \_\_\_\_\_ Rights Warrants for each Right held (the “**Basic Subscription Right**”). Rights may only be exercised for whole Right Shares and Rights Warrants; no fractional securities will be issued in the Rights Offering.

(b) The Rights will not trade or be listed for quotation on any exchange or service, and shall be non-transferable.

(c) Any holder of Rights who fully exercises all Basic Subscription Rights issued to such holder is entitled to subscribe for Units which were not otherwise subscribed for by others pursuant to their Basic Subscription Rights (the “**Over-Subscription Right**”). The Over-Subscription Right shall allow a holder of a Right to subscribe for an additional amount of Units above the amount which such holder was otherwise entitled to subscribe. Units acquired pursuant to the Over-Subscription Right are subject to allotment, as more fully discussed in the Prospectus (as defined herein).

(d) The Rights will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 2017 (the “**Expiration Date**”). The Company shall have the right to extend the Expiration Date in its sole discretion. Any Rights not exercised on or before the Expiration Date will expire worthless without any payment to the holders of unexercised Rights.

(e) All funds from the exercise of Basic Subscription Rights and Over-Subscription Rights will be deposited with Broadridge Corporate Issuer Solutions, Inc. (“**Broadridge**”), as subscription agent (in this context, the “**Subscription Agent**”), and held in a segregated account with the Subscription Agent pending a final determination of the number of Rights Shares and Rights Warrants to be issued pursuant to the exercise of Basic Subscription Rights and Over-Subscription Rights. The Company may conduct a closing of the Rights Offering (a “**Closing**”) at its sole discretion at any time following the Expiration Date.

2. Appointment as Dealer-Manager; Role of Dealer-Manager.

(a) On the terms and conditions set forth herein, the Company hereby appoints Maxim Group LLC (“**Maxim**”) as the dealer-manager (the “**Dealer-Manager**”) for the Rights Offering and authorizes the Dealer-Manager to act as such in connection with the Rights Offering.

(b) The services previously provided by the Dealer-Manager under that certain engagement letter, dated September 27, 2017, between the Company and the Dealer-Manager (as amended, the “**Engagement Letter**”), or to be provided by the Dealer-Manager through the Closing, consist of the following:

(i) providing market assistance in connection with the conduct of the Rights Offering (which shall include assisting the Company in drafting a presentation that may be used to market the Rights Offering to investors and assistance in the coordination of the Rights Offering together with Broadridge);

(ii) providing financial advice to the Company in connection with the Rights Offering (including advice regarding the structure, pricing, timing and other terms and conditions of the Rights Offering);

(iii) responding to requests for information and materials in connection with the Rights Offering (it being agreed that Broadridge (in this capacity, as the “**Information Agent**”) will be the Company’s primary third party source of information regarding the Rights Offering and will be identified by the Company as such in the Registration Statement) (the services described in clauses (i), (ii) and (iii) being collectively referred to as the “**Advisory Services**”); and

(iv) in accordance with customary practice, using best efforts to solicit the exercise of the Rights and subscriptions for the Units pursuant to the Offer Documents (as defined herein) (the services described in this clause (iv) being referred to as the “**Solicitation Services**”);



(c) The services of the Dealer-Manager described in clauses (b)(iii) and (iv) above shall commence on the date that the Registration Statement is declared effective by the U.S. Securities and Exchange Commission (the “**Commission**”). The Company hereby authorizes the Dealer-Manager, or one or more registered broker-dealers chosen exclusively by the Dealer-Manager, to act as the Company’s agent in making the Rights Offering to residents of such states as to which such agent designation may be necessary to comply with applicable law.

(d) The Company hereby acknowledges that Maxim is acting only as a dealer-manager in connection with the Rights Offering. The Dealer-Manager shall not (and shall not be obligated to) underwrite or place any Rights or any Rights Shares or Rights Warrants, and the Company acknowledges and agrees that Maxim’s participation as Dealer-Manager does not ensure or guarantee that the Company will raise any funds through the Rights Offering.

(e) The Company further acknowledges that Maxim is acting as an independent contractor pursuant to a contractual relationship created solely by this Agreement entered into on an arm’s length basis and in no event do the parties intend that Maxim act or be responsible as a fiduciary to the Company, its management, shareholders, creditors or any other natural person, partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity or organization (each, a “**Person**”) in connection with any activity that Maxim may undertake or has undertaken in furtherance of the Rights Offering, either before or after the date hereof. Maxim hereby expressly disclaims any fiduciary or similar obligations to the Company, either in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions, and the Company hereby confirms its understanding and agreement to that effect. The Company and Maxim agree that they are each responsible for making their own independent judgments with respect to any such transactions, and that any opinions or views expressed by Maxim to the Company regarding such transactions, including but not limited to any opinions or views with respect to the price or market for the Company’s securities, do not constitute advice or recommendations to the Company. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against Maxim with respect to any breach or alleged breach of any fiduciary or similar duty to the Company in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions.

3. No Liability for Acts of Brokers, Dealers, Banks and Trust Companies. The Dealer-Manager shall not be subject to any liability to the Company (or any of the Company’s Subsidiaries (as defined below) or “Affiliates,” as such term is defined in Rule 144 under the Securities Act of 1933, as amended (the “**Securities Act**”), for any act or omission on the part of any broker or dealer in securities (other than the Dealer-Manager) or any bank or trust company or any other Person, and the Dealer-Manager shall not be liable for its own acts or omissions in performing its obligations as advisor or Dealer-Manager hereunder or otherwise in connection with the Rights Offering or the related transactions, except for any losses, claims, damages, liabilities and expenses determined in a final judgment by a court of competent jurisdiction to have resulted directly from any such acts or omissions undertaken or omitted to be taken by the Dealer-Manager through its gross negligence, intentional omission or willful misconduct. In soliciting or obtaining exercises of Rights, the Dealer-Manager shall not be deemed to be acting as the agent of the Company or as the agent of any broker, dealer, bank or trust company, and no

broker, dealer, bank or trust company shall be deemed to be acting as the Dealer-Manager's agent or as the agent of the Company. As used herein, the term "Subsidiary" means a significant subsidiary of the Company as defined as defined in Rule 1-02 (w) of Regulation S-X of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). Unless the context specifically requires otherwise, the term "Company" as used in this Agreement means the Company and its Subsidiaries collectively on a consolidated basis.

4. The Offer Documents.

(a) There will be used in connection with the Rights Offering certain materials in addition to the Registration Statement, any Preliminary Prospectus or the Prospectus (each as defined herein), including: (i) all exhibits to the Registration Statement which pertain to the conduct of the Rights Offering; and (ii) any soliciting materials relating to the Rights Offering approved by the Company (collectively with the Registration Statement, any Preliminary Prospectus and the Prospectus, the "**Offer Documents**"). The Dealer-Manager shall be given such opportunity to review and comment upon the Offer Documents.

(b) The Company agrees to furnish the Dealer-Manager with as many copies as it may reasonably request of the final forms of the Offer Documents and the Dealer-Manager is authorized to use copies of the Offer Documents in connection with its acting as Dealer-Manager. The Dealer-Manager hereby agrees that it will not disseminate any written material for or in connection with the solicitation of exercises of Rights pursuant to the Rights Offering other than the Offer Documents.

(c) The Company represents and agrees that no solicitation material, other than the Offer Documents and the documents to be filed therewith as exhibits thereto (each in the form of which has been approved by the Dealer-Manager), will be used in connection with the Rights Offering by or on behalf of the Company without the prior approval of the Dealer-Manager, which approval will not be unreasonably withheld. In the event that the Company uses or permits the use of any such solicitation material in connection with the Rights Offering, then the Dealer-Manager shall be entitled to withdraw as Dealer-Manager in connection with the Rights Offering and the related transactions without any liability or penalty to the Dealer-Manager or any other Person identified in Section 11 hereof as an "indemnified party," and the Dealer-Manager shall be entitled to receive the payment of all fees and expenses payable under this Agreement or the Engagement Letter which have accrued to the date of such withdrawal.

5. Representations and Warranties. The Company represents and warrants to the Dealer-Manager that:

(a) The Registration Statement on Form S-1 (Registration No. 333-\_\_\_\_\_) with respect to the Rights, the Units, the Rights Shares and the Rights Warrants has: (i) been prepared by the Company in conformity with, in all material respects, the requirements of the Securities Act and the rules and regulations of the Commission (the "**Rules and Regulations**") promulgated under the Securities Act; (ii) been filed with the Commission under the Securities Act; and (iii) become effective under the Securities Act. Copies of such Registration Statement as amended to date have been delivered or made available by the Company to the Dealer-Manager. For purposes of this Agreement, "**Effective Time**" means the date and the time as of

which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission; “**Effective Date**” means the date of the Effective Time; “**Preliminary Prospectus**” means each prospectus included in such registration statement, or amendments thereof, before it becomes effective under the Securities Act and any prospectus filed with the Commission by the Company with the consent of the Dealer-Manager pursuant to Rule 424(a) of the Rules and Regulations; “**Registration Statement**” means such Registration Statement, as amended at the Effective Time, including any documents which are exhibits thereto; and “**Prospectus**” means such final prospectus, as first filed with the Commission pursuant to paragraph (1) or (4) of Rule 424(b) of the Rules and Regulations. The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus. All references in this Agreement to the Registration Statement, a Preliminary Prospectus, and the Prospectus, or any amendments or supplements to any of the foregoing shall be deemed to include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“**EDGAR**”). Additionally, any reference in this Agreement to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-1 under the Securities Act, as of the effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be. The Prospectus delivered to the Dealer-Manager for use in connection with the Rights Offering will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T promulgated by the Commission.

(b) The Registration Statement (together with all exhibits filed as part of the Registration Statement) conforms, and any Preliminary Prospectus and the Prospectus and any further amendments or supplements to the Registration Statement conforms or will conform, when they are filed with or become effective by the Commission, as the case may be, in each case, in all material respects, to the requirements of the Securities Act and the Rules and Regulations and collectively do not and will not, as of the applicable Effective Date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date (as to the Prospectus and any amendment or supplement thereto) contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (with respect to the Prospectus, in the light of the circumstances under which they were made) not misleading; provided that no representation or warranty is made by the Company as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Dealer-Manager specifically for inclusion therein, it being acknowledged and agreed that such information provided by or on behalf of the Dealer-Manager consists solely and exclusively of the following disclosure contained in the Prospectus (collectively, the “**Dealer-Manager Information**”): (i) the name of Maxim acting in its capacity as dealer-manager for the Rights Offering and (ii) “The Rights Offering — Distribution Arrangements.”

(c) Neither: (i) any Issuer-Represented General Free Writing Prospectus(es) (as defined below) issued at or prior to the Closing and the Prospectus, all considered together (collectively, the “**General Disclosure Package**”), nor (ii) any individual Issuer-Represented Limited-Use Free Writing Prospectus(es) (as defined below), when considered together with the General Disclosure Package, includes or will include as of the Closing any untrue statement of a

material fact or omits or will omit as of the Closing to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Prospectus included in the Registration Statement, the General Disclosure Package or any Issuer-Represented Limited-Use Free Writing Prospectus (as defined below) in conformity with written the Dealer-Manager Information.

(d) Each Issuer-Represented Free Writing Prospectus, if any, as of its issue date and at all subsequent times until the Closing or until any earlier date that the Company notified or notifies the Dealer-Manager as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the then-current Registration Statement or Prospectus. If at any time following issuance of an Issuer-Represented Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer-Represented Free Writing Prospectus conflicted or would conflict with the information contained in the then-current Registration Statement or Prospectus relating to the Securities or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company has notified or will notify promptly the Dealer-Manager so that any use of such Issuer-Represented Free Writing Prospectus may cease until it is promptly amended or supplemented by the Company, at its own expense, to eliminate or correct such conflict, untrue statement or omission.

(e) The Company has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Securities other than the General Disclosure Package, any Issuer-Represented Limited-Use Free Writing Prospectus or the Prospectus or other materials permitted by the Securities Act to be distributed by the Company. Unless the Company obtains the prior consent of the Dealer-Manager, the Company has not made and will not make any offer relating to the Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act, required to be filed with the Commission; provided that the prior written consent of the Dealer-Manager shall be deemed to have been given in respect of any free writing prospectus referenced on Schedule I attached hereto. The Company has complied and will comply with the requirements of Rules 164 and 433 under the Securities Act applicable to any Issuer-Represented Free Writing Prospectus as of its issue date and at all subsequent times through the Closing, including timely filing with the Commission where required, legending and record keeping. To the extent an electronic road show is used, the Company has satisfied and will satisfy the conditions in Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic road show.

(f) There are no contracts, agreements, plans or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Securities Act or by the Rules and Regulations which have not been described in the Prospectus or filed as exhibits to the Registration Statement or referred to in, or incorporated by reference into, the exhibit table of the Registration Statement as permitted by the Rules and Regulations.

(g) The Company and each of its Subsidiaries have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, are duly qualified to do business and are in good standing as foreign corporations in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the absence of such power or authority (either individually and in the aggregate) could not reasonably be expected to have a material adverse effect on: (i) the business, condition (financial or otherwise), results of operations, shareholders' equity, properties or prospects (as such prospects are disclosed or described in the Prospectus) of the Company or its Subsidiaries; (ii) the long-term debt or capital stock of the Company or its Subsidiaries; or (iii) the Offering or consummation of any of the other transactions contemplated by this Agreement, the Registration Statement or the Prospectus (any such effect being a "**Material Adverse Effect**").

(h) This Agreement has been duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery by the Dealer-Manager, constitutes the valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity.

(i) Neither the Company nor any of its Subsidiaries: (i) is in violation of its charter or by-laws, (ii) in default under or in breach of, and no event has occurred which, with notice or lapse of time or both, would constitute a default or breach under or result in the creation or imposition of any lien, charge, mortgage, pledge, security interest, claim, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever (each, a "**Lien**") upon any of their property or assets pursuant to, any material contract (including Government Contracts (as defined below), agreement, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject or (iii) is in violation in any respect of any law, rule, regulation, ordinance, directive, judgment, decree or order, foreign and domestic, to which it or its properties or assets may be subject or has failed to obtain any material license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its properties or assets or to the conduct of its business, except, in the case of clauses (ii) and (iii) above, any violation, default or failure to possess the same that would not have a Material Adverse Effect.

Each Government Contract is in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms against all parties thereto and was awarded in compliance with applicable Law (as defined below). The Company has complied in all material respects with all terms and conditions of each Government Contract, including all clauses, provisions and requirements incorporated expressly by reference or by operation of Law therein and including any requirements relating to the charging of prices or costs, minimum qualifications of personnel and warranties. No Government Contract has, to date, or is currently projected to have, fully burdened costs incurred in excess of the Government Contract fixed price, or, in the case of flexibly-priced or cost-reimbursement contracts, fully

burdened costs incurred in excess of the ceiling price or funded amount of the Government Contract. The Company is not aware of any adverse or negative past performance evaluations or ratings pertaining to any Government Contract. There has not been any withholding or setoff of any payments by a Governmental Authority or prime contractor or higher-tier subcontractor nor, to the Company's knowledge, has there been any attempt to withhold or setoff, any payments due under any Government Contract on any basis, including the basis that a cost incurred or invoice rendered by the Company was questioned or disallowed by a Governmental Authority, prime contractor or higher-tier subcontractor or any of their audit representatives, nor is there any basis for any such withhold or setoff. "**Government Contract**" means any material prime contract, subcontract, teaming agreement or arrangement, joint venture, basic ordering agreement, blanket purchase agreement, pricing agreement, letter contract, contract awarded under the Federal Supply Schedule program, purchase order, task order or delivery order or other Contract or similar arrangement of any kind, between the Company and (a) any Governmental Authority, (b) any prime contractor of a Governmental Authority in its capacity as a prime contractor, or (c) any subcontractor (or lower tier subcontractor) with respect to any contract of a type described in clauses (a) or (b) above. "**Governmental Authority**" means any federal, state, local, foreign or other governmental, quasi-governmental or administrative body, instrumentality, department or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute resolving panel or body and shall include any Person acting on behalf of a such Governmental Authority. "**Law**" means any federal, state, local, municipal, foreign or other law, statute, legislation, principle of common law, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, directive, requirement, writ, injunction, settlement, Permit or Order that is or has been issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

(j) Prior to or on the date hereof the Company and Broadridge have or will have entered into a subscription and information agent agreement (the "**Agent Agreement**"). When executed by the Company, the Agent Agreement will have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by Broadridge will constitute a valid and legally binding agreement of the Company enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity.

(k) The Rights to be issued and distributed by the Company have been duly and validly authorized and, when issued and delivered in accordance with the terms of the Offer Documents, will be duly and validly issued, and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, no holder of the Rights is or will be subject to personal liability by reason of being such a holder, and the Rights conform to the description thereof contained in the Prospectus.

(l) The Rights Warrants conform to the description thereof in the Registration Statement and in the Prospectus and, when issued and delivered by the Company in accordance with the terms of the Offer Documents, will be duly and validly issued, and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms. The shares of Common Stock issuable upon exercise of the Rights Warrants

have been duly authorized and reserved for issuance upon exercise of the Rights Warrants by all necessary corporate action on the part of the Company and, when issued and delivered and paid for upon such exercise in accordance with the terms of the Rights Warrants, will be validly issued, fully paid, nonassessable and free of preemptive rights and will conform to the description thereof in the Prospectus.

(m) Except as disclosed in the Prospectus with respect to the Company's authorized capitalization, the Rights Shares have been duly and validly authorized and reserved for issuance upon exercise of the Rights and are free of statutory and contractual preemptive rights and are sufficient in number to meet the exercise requirements of the Rights Offering; and Rights Shares, when so issued and delivered against payment therefor in accordance with the terms of the Rights Offering, will be duly and validly issued, fully paid and non-assessable, with no personal liability attaching to the ownership thereof, and will conform to the description thereof contained in the Prospectus.

(n) The Common Stock is listed for trading on the NASDAQ Capital Market ("**NASDAQ**"). Except as set forth in the Registration Statement, the Company has not received an oral or written notification from NASDAQ or any court or any other federal, state, local or foreign governmental or regulatory authority having jurisdiction over the Company or any of its Subsidiaries or any of their properties or assets ("**Governmental Authority**") of any inquiry or investigation or other action that would cause the Common Stock, the Rights Shares or the Rights Warrants to not be listed for trading on NASDAQ.

(o) The Company has an authorized capitalization as set forth under the caption "Description of Securities" in the Prospectus and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of the Company capital stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in the Registration Statement. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

(p) The Company and its Subsidiaries own or lease all such assets or properties as are necessary to the conduct of its business as presently operated and as proposed to be operated as described in the Registration and the Prospectus. The Company or its Subsidiaries have good and marketable title in fee simple to all assets or real property and good and marketable title to all personal property owned by them, in each case free and clear of any Lien, except for such (i) Liens as are described in the Registration Statement and the Prospectus, (ii) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (iii) Liens for the payment of federal, state or other taxes, for which appropriate reserves

have been made in accordance with GAAP, and the payment of which is neither delinquent nor subject to penalties. Any assets or real property and buildings held under lease or sublease by the Company or any Subsidiary is held under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not interfere with, the use made and proposed to be made of such property and buildings by the Company or such Subsidiary. Neither the Company nor any Subsidiary has received any notice of any material claim adverse to its ownership of any real or personal property or of any material claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company or any Subsidiary.

(q) The Company and each of its Subsidiaries have all material consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all judicial, regulatory and other Governmental Authorities and all third parties, foreign and domestic, including, without limitation, those administered by the U.S. Food and Drug Administration of the U.S. Department of Health and Human Services (“**FDA**”), the European Medicines Agency (“**EMA**”), Japanese Ministry of Health, Labor and Welfare (“**JMHLW**”) or by any foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA, EMA or JMHLW (collectively, with the Licensing Requirements described below, the “**Consents**”), to own, lease and operate their properties and conduct their businesses as presently being conducted and as disclosed in the Registration Statement and the Prospectus, and, to the Company’s knowledge, each such Consent is valid and in full force and effect. The Company has not received notice of any investigation or proceedings which results in or, if decided adversely to the Company, would reasonably be expected to result in the revocation of any Consent or would reasonably be expected to have a Material Adverse Effect. No Consent contains a materially burdensome restriction not adequately disclosed in the Registration Statement and the Prospectus. To the Company’s knowledge, the Company and its Subsidiaries are in compliance with all such Consents, and all such Consents are valid and in full force and effect. Neither the Company nor any Subsidiary has received notification of any revocation, suspension, termination or invalidation (or proceedings related thereto) of any such Consent and, to the Company’s knowledge after reasonable investigation, no event has occurred that allows or results in, or after notice or lapse of time or both would allow or result in, revocation, suspension, termination or invalidation (or proceedings related thereto ) of any such Consent and the Company has no reason to believe that any such Consent will not be renewed (if renewal is required).

(r) The execution, delivery and performance of this Agreement by the Company, the issuance of the Rights in accordance with the terms of the Offer Documents, the issuance of Rights Shares and the Rights Warrants in accordance with the terms of the Rights Offering, and the consummation by the Company of the transactions contemplated hereby, the Agent Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other material agreement or instrument to which the Company or any of its Subsidiaries or any of its Affiliates is a party or by which the Company or any of its Subsidiaries or its Affiliates is bound or to which any of the properties or assets of the Company or any of its Subsidiaries or its Affiliates is subject, nor will such actions result in any violation of the provisions of the charter or by-laws of the Company or any of its Subsidiaries or any statute or any order, rule or regulation of any Governmental Authority, except where such violation would not reasonably be expected to have a Material Adverse Effect; and except for the registration of



the Rights, Rights Shares and the Rights Warrants under the Securities Act and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act and applicable state securities laws in connection with the distribution of the Rights and the sale of the Rights Shares and Rights Warrants by the Company, no consent, approval, authorization or order of, or filing or registration with, any such court or Governmental Authority is required for the execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby.

(s) Except as otherwise set forth in the Registration Statement and the Prospectus, there are no contracts, agreements or understandings between the Company and any Person granting such Person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such Person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act. No holder of any security of the Company has any rights of rescission of similar rights with respect to such securities held by them.

(t) Neither the Company nor any of its Subsidiaries has sustained, since the date of the latest balance sheet included in the Prospectus or after such date and as disclosed in the Prospectus, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since such date or after such date and as disclosed in the Prospectus, there has not been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity, results of operations or prospects (as such prospects are disclosed or described in the Prospectus) of the Company and its Subsidiaries (a "**Material Adverse Change**"). Since the date of the latest balance sheet presented in the Prospectus, the Company has not incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company, except for liabilities, obligations and transactions which are disclosed in the Registration Statement, any Preliminary Prospectus and the Prospectus.

(u) KPMG LLP ("**KPMG**") and BDO USA, LLP ("**BDO**"), whose reports relating to the Company are included in the Registration Statement, are independent public accountants as required by the Securities Act, the Exchange Act, the Rules and Regulations and the rules and regulations promulgated by the Public Company Accounting Oversight Board (the "**PCAOB**"). KPMG and BDO are duly registered and in good standing with the PCAOB. KPMG and BDO have not, during the periods covered by the financial statements included in the Registration Statement, the Preliminary Prospectus and the Prospectus, provided to the Company any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

(v) The financial statements, including the notes thereto, and any supporting schedules included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the financial position as of the dates indicated and the cash

flows and results of operations for the periods specified of the Company. Except as otherwise stated in the Registration Statement, any Preliminary Prospectus and the Prospectus, said financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved. Any supporting schedules included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information required to be stated therein. No other financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement. The other financial and statistical information included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information included therein and have been prepared on a basis consistent with that of the financial statements that are included in the Registration Statement, such Preliminary Prospectus and the Prospectus and the books and records of the respective entities presented therein.

(w) There are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement, any Preliminary Prospectus and the Prospectus in accordance with Regulation S-X under the Securities Act which have not been included as so required. The pro forma and/or as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus has been properly compiled and prepared in accordance with the applicable requirements of the Securities Act and the Rules and Regulations and include all adjustments necessary to present fairly, in all material respects, in accordance with generally accepted accounting principles the pro forma and as adjusted financial position of the respective entity or entities presented therein at the respective dates indicated and their cash flows and the results of operations for the respective periods specified. The assumptions used in preparing the pro forma and as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein. The related pro forma and pro forma as adjusted adjustments give appropriate effect to those assumptions; and the pro forma and pro forma as adjusted financial information reflect the proper application of those adjustments to the corresponding historical financial statement amounts.

(x) The statistical, industry-related and market-related data included in the Registration Statement, any Preliminary Prospectus and the Prospectus are based on or derived from sources which the Company reasonably believes are reliable and accurate, and such data agree with the sources from which they are derived. All required third party consents have been obtained in order for such data to be included in the Registration Statement, any Preliminary Prospectus and the Prospectus.

(y) Except as disclosed in the Registration Statement and the Prospectus, the Company maintains a system of internal accounting and other controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded

accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(z) The Company's Board of Directors has validly appointed an audit committee and compensation committee whose composition satisfies the requirements of the rules and regulations of the Commission and NASDAQ and the Company's Board of Directors and/or audit committee and the compensation committee has each adopted a charter and such charters are in full force and effect as of the date hereof. Neither the Company's Board of Directors nor the audit committee thereof has been informed, nor is any director of the Company aware, of: (i) except as disclosed in the Registration Statement and the Prospectus, any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(aa) The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002, as amended ("**Sarb-Ox**") applicable to the Company, and the rules and regulations promulgated thereunder and related or similar rules and regulations promulgated by any other Governmental Authority or self-regulatory entity or agency, except for violations which, singly or in the aggregate, are disclosed in the Prospectus or would not have a Material Adverse Effect.

(bb) No relationship, direct or indirect, exists between or among any of the Company or any Affiliate of the Company, on the one hand, and any director, officer, shareholder, customer or supplier of the Company or any Affiliate of the Company, on the other hand, which is required by the Securities Act, the Exchange Act or the Rules and Regulations to be described in the Registration Statement or the Prospectus which is not so described as required. Except as disclosed in the Registration Statement and the Prospectus, there are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members. The Company has not, in violation of Sarb-Ox, directly or indirectly, including through any Affiliate of the Company (other than as permitted under the Sarb-Ox for depositary institutions), extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(cc) Except as described in the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its Subsidiaries is a party or of which any property or asset of the Company or any of its Subsidiaries is the subject, including without limitation any proceeding before the FDA, the EMEA, the JMHLW or comparable federal, state, local or foreign governmental bodies (it being understood that the interaction between the Company and the FDA, the EMEA, the JMHLW and such comparable governmental bodies relating to the clinical development and product approval process shall not be deemed proceedings for purposes of this representation), which, if determined adversely to the Company or any of its Subsidiaries, are reasonably likely to have a Material Adverse Effect; and to the Company's knowledge, except as disclosed in the Prospectus, no such proceedings are

threatened or contemplated by Governmental Authorities or threatened by others. The Company has not received any written cure notice or show cause notice regarding performance of a Government Contract or any written or oral notice of, any claim, action, litigation, inquiry, proceeding (arbitral, administrative, legal or otherwise, including any informal proceeding), cause of action, audit, suit, settlement, stipulation, hearing, investigation, charge, complaint, demand or similar matter, for, or assertion of, a condition of default, breach of contract, or material violation of applicable Law, in connection with a Government Contract.

(dd) The Company and its Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, except where the failure to make such filings or make such payments, either individually or in the aggregate, could not reasonably be expected to have, a Material Adverse Effect. The Company has made adequate charges, accruals and reserves in its financial statements above in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its Subsidiaries has not been finally determined.

(ee) Each of the Company and its Subsidiaries maintains insurance of the types and in the amounts which the Company believes to be reasonable and sufficient for a company of its size operating in the Company's industry, including, but not limited to: (i) directors' and officers' insurance (including insurance covering the Company, its directors and officers for liabilities or losses arising in connection with the Rights Offering, including, without limitation, liabilities or losses arising under the Securities Act, the Exchange Act, the Rules and Regulations and applicable foreign securities laws), (ii) insurance covering real and personal property owned or leased against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, (iii) business interruption insurance and (iv) product-related or clinical trial-related insurance. There are no material claims by the Company or any of its Subsidiaries under any policy or instrument described in this paragraph as to which any insurance company is denying liability or defending under a reservation of rights clause. All of the insurance policies described in this paragraph are in full force and effect. Neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(ff) Intellectual Property.

(i) The Company owns, licenses or possess the right to use sufficient trademarks, trade names, patents, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other similar rights (collectively, "**Intellectual Property Rights**") as are reasonably necessary or material to conduct its business as now conducted and contemplated to be conducted, each as described in the Registration Statement, any Preliminary Prospectus and the Prospectus. To the Company's knowledge, all Intellectual Property Rights are valid and enforceable.

(ii) Except as set forth in the Registration Statement, any Preliminary Prospectus and the Prospectus: (A) there is no actual, pending or, to the Company's knowledge, threatened action, suit, proceeding, or claim by others challenging the rights of the Company and its Subsidiaries and Affiliates in or to any Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (B) there is no actual, pending or, to the Company's knowledge, threatened action, suit, proceeding, or claim by others that the Company or its Subsidiaries or Affiliates infringes, misappropriates, or otherwise violates any Intellectual Property Rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (C) there is no actual, pending or, to the Company's knowledge, threatened action, suit, proceeding, or claim by others challenging the validity or scope of any such Intellectual Property Rights owned by the Company or its Subsidiaries or Affiliates and the Company is unaware of any facts which would form a reasonable basis for any such claim; (D) to the Company's knowledge, the operation of the business of the Company, its Subsidiaries and its Affiliates as now conducted and in connection with the development and commercialization of its technology described in the Registration Statement, any Preliminary Prospectus and the Prospectus does not infringe any claim of any patent or published patent application nor would such infringement, misappropriation or violation arise upon the commercialization of any product or service described in the Registration Statement, any Preliminary Prospectus and the Prospectus as under development; (E) to the Company's knowledge, there is no "prior art" of which the Company is aware that may render any patent owned or licensed by the Company invalid or any patent application owned or licensed by the Company or its Subsidiaries or Affiliates unpatentable which has not been disclosed to the applicable government patent office; and (F) the patents, trademarks, and copyrights maintained by the Company or its Subsidiaries or Affiliates are in full force and in effect, and none of such patents, trademarks and copyrights have been adjudged invalid or unenforceable in whole or in part. Neither the Company nor its Subsidiaries or Affiliates is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other Person that are required to be set forth in the Registration Statement, any Preliminary Prospectus and Prospectus and are not described therein in all material respects.

(iii) The Company has duly and properly filed or caused to be filed with the U. S. Patent and Trademark Office (the "PTO") and applicable foreign and international patent authorities all patent applications owned by the Company, its Subsidiaries or Affiliates (the "**Company Patent Applications**"). The product candidates described in the Registration Statement, any Preliminary Prospectus and the Prospectus as under development by the Company fall within the scope of the claims of one or more patents or patent applications owned by, or exclusively licensed to, the Company. The Company has complied in all material respects with the PTO's duty of candor and disclosure for the Company Patent Applications and has made no material misrepresentation in the Company Patent Applications. The Company Patent Applications disclose patentable subject matters, and the Company has not been notified of any inventorship challenges nor has any interference been declared or provoked nor is any material fact known by the Company that would preclude the issuance of patents with respect to the Company Patent Applications or would render such patents invalid or unenforceable. No third party possesses rights to the Company's Intellectual Property Rights that, if exercised, could enable such party to develop products competitive to those the Company intends to develop as described in the Prospectus.

(iv) Other than as disclosed in the Registration Statement, any Preliminary Prospectus and Prospectus, to the Company's knowledge, there are no rulemaking or similar proceedings before the FDA, PTO or applicable foreign and international patent authorities, which affect or involve the Company or any of the processes or technologies that the Company has developed, is developing or proposes to develop or uses or proposes to use which, if the subject of an action unfavorable to the Company, would result in a Material Adverse Change.

(v) From and after January 1, 2014, the Company has obtained legally binding written agreements from all officers, employees and third parties with whom the Company has shared confidential proprietary information: (A) of the Company, or (B) received from others which the Company is obligated to treat as confidential, which agreements require such employees and third parties to keep such information confidential. The Company has taken all necessary actions to obtain ownership of all works of authorship and inventions made by its employees, consultants and contractors during the time they were employed by or under contract with the Company and which relate to the Company's business as currently conducted. All founders and current key employees have signed confidentiality and invention assignment agreements with the Company.

(vi) The Company possesses valid and current licenses, registrations, certificates, permits and other authorizations issued by the appropriate foreign, federal, state or local regulatory authorities as necessary to conduct its respective businesses (collectively, the "**Licensing Requirements**") and are enforceable by or against the parties thereto in accordance to its terms, except where the failure of a Licensing Requirement would not have a Material Adverse Effect. The Company has not received any notice of proceedings relating to the revocation or modification of, or noncompliance with, any such license, certificate, permit or authorization, which could result in a Material Adverse Effect. No action, suit or proceeding, other than routine audits, by or before any court or Governmental Authority or any arbitrator involving the Company with respect to the removal, revocation, suspension or other termination of the authority to operate under the Licensing Requirements is pending or, to the Company's knowledge, threatened. The Company does not believe that any pending audit is reasonably likely to result in the removal, revocation, suspension or other termination of the Company's authority to operate under the Licensing Requirements.

(vii) The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Company's right to own, use, or hold for use any of the Intellectual Property Rights as owned, used or held for use in the conduct of the business as currently conducted.

(viii) To the Company's knowledge, the Company has at all times complied with all applicable laws relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by the Company in the conduct of the Company's business. No claims have been asserted or threatened against the Company alleging a violation of any person's privacy or personal information or data rights and the consummation of the transactions contemplated hereby will not breach or otherwise cause any violation of any law related to privacy, data protection, or the collection and use of personal information collected,

used, or held for use by the Company in the conduct of the Company's business, except such claims as would not reasonably be likely to result in a Material Adverse Effect. The Company takes reasonable measures to ensure that such information is protected against unauthorized access, use, modification, or other misuse.

(gg) Except as described in any Preliminary Prospectus, the Prospectus and the Registration Statement, the Company: (i) is and at all times has been in compliance with all statutes, rules, regulations or guidance applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured, distributed or sold by the Company or any component thereof (such statutes, rules, regulations or guidance, collectively, "**Applicable Laws**"); (ii) is, and to the Company's knowledge, the Company's manufacturing facility, after reasonable investigation, and operations of its suppliers are in compliance with all applicable federal, state, local and foreign laws, regulations, orders and decrees governing its business as prescribed by the FDA, the EMEA, the JMHLW or any other applicable federal, state or foreign governmental authority agencies or bodies engaged in the regulation of pharmaceuticals or biohazardous substances or materials, (iii) has not received any notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA, the EMEA, the JMHLW or any other Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("**Authorizations**"); (iv) possesses all Authorizations and such Authorizations are valid and in full force and effect and are not in violation of any term of any such Authorizations; (v) has not received notice of any claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from any Governmental Authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no knowledge that any such Governmental Authority or third party is considering any such claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action; (vi) has not received notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority is considering such action; and (vii) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct in all material respects on the date filed (or were corrected or supplemented by a subsequent submission), except, in the case of each of clauses (i), (ii), (iii) (iv), (vi) and (vii) for any default, violation or event that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(hh) The studies and tests conducted or sponsored by or on behalf of the Company (the "Studies and Tests") that are described or referred to in any Preliminary Prospectus, the Prospectus and the Registration Statement were and, if still pending, are being conducted in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all Applicable Laws and Authorizations; the descriptions of the results of such studies, tests and trials contained in any Preliminary Prospectus, the Prospectus and the Registration Statement are accurate and complete in all

material respects and fairly present the data derived from such studies, tests and trials. The Company is not aware of any studies or tests, the results of which the Company believes reasonably call into question the study or test described or referred to in any Preliminary Prospectus, the Prospectus and the Registration Statement when viewed in the context in which such results are described. The Company has not received any notices or correspondence with the FDA, the EMEA, the JMHLW or any foreign, state or local governmental body exercising comparable authority suggesting or requiring a clinical hold, termination, suspension or material modification of the Studies and Tests and that such clinical hold, termination, suspension or material modification would reasonably be expected to have a Material Adverse Effect, and, to the Company's knowledge after reasonable investigation, there are no reasonable grounds for the same. The Company has obtained (or caused to be obtained) informed consent by or on behalf of each human subject who participated in Studies and Tests. In using or disclosing patient information received by the Company in connection with the Studies and Tests, the Company has complied in all material respects with all applicable laws and regulatory rules, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations thereunder. To the Company's knowledge after reasonable investigation, none of the Studies and Tests involved any investigator who has been disqualified as a clinical investigator or has been found by the FDA to have engaged in scientific misconduct or debarred or excluded from participation in any governmental health care payment program.

(ii) Neither the Company nor, to the Company's knowledge, any of the Company's directors, officers or employees has violated: (i) the Bank Secrecy Act, as amended, (ii) the Money Laundering Control Act of 1986, as amended, (iii) the Foreign Corrupt Practices Act, or (iv) the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, and/or the rules and regulations promulgated under any such law, or any successor law, except for such violations which, singly or in the aggregate, would not have a Material Adverse Effect.

(jj) Neither the Company nor any of its Affiliates has, prior to the date hereof, made any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act or the Rules and Regulations with the offer and sale of the Shares pursuant to the Registration Statement.

(kk) Transactions Affecting Disclosure to FINRA.

(i) Except as described in the Registration Statement and the Prospectus, there are no claims, payments, arrangements, agreements or understandings relating to the payment of a finder's, consulting or origination fee or other compensation by the Company with respect to the issuance or exercise of the Rights or the sale of the Rights Shares or Rights Warrants or any other arrangements, agreements or understandings of the Company or, to the Company's knowledge, the Company's officers, directors and employees or Affiliates that may affect the Dealer-Manager's compensation, as determined by the Financial Industry Regulatory Authority, Inc. ("FINRA").



(ii) Except as previously disclosed by the Company to the Dealer-Manager in writing, no officer, director, or beneficial owner of 5% or more of any class of the Company's securities (whether debt or equity, registered or unregistered, regardless of the time acquired or the source from which derived) or any other Affiliate is a member or a Person associated, or affiliated with a member of FINRA.

(iii) No proceeds from the exercise of the Rights will be paid to any FINRA member, or any Persons associated or affiliated with a member of FINRA, except as specifically contemplated herein.

(iv) Except as previously disclosed by the Company to the Dealer-Manager, no Person to whom securities of the Company have been privately issued within the 180-day period prior to the initial filing date of the Registration Statement has any relationship or affiliation or association with any member of FINRA.

(ll) There are no contracts, agreements or understandings between the Company and any Person that would give rise to a valid claim against the Company or the Dealer-Manager for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement. Other than the Dealer-Manager, the Company has not employed any brokers, dealers or underwriters in connection with solicitation of exercise of Rights in the Rights Offering, and except provided for in Sections 6 and 7 hereof, no other commissions, fees or discounts will be paid by the Company or otherwise in connection with the Rights Offering.

(mm) The Company and its Subsidiaries have at all times operated their businesses in material compliance with all Environmental Laws, and no material expenditures are or will be required in order to comply therewith. The Company has not received any notice or communication that relates to or alleges any actual or potential violation or failure to comply with any Environmental Laws that will result in a Material Adverse Effect. As used herein, the term "Environmental Laws" means all applicable laws and regulations, including any licensing, permits or reporting requirements, and any action by a Governmental Authority pertaining to the protection of the environment, protection of public health, protection of worker health and safety, or the handling of hazardous materials, including without limitation, the Clean Air Act, 42 U.S.C. § 7401, et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1321, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 690-1, et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.

(nn) Except as set forth in the Registration Statement, any Preliminary Prospectus or the Prospectus, the Company is not a party to an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") which: (i) is subject to any provision of ERISA and (ii) is or was at any time maintained, administered or contributed to by the Company and covers any employee or former employee of the Company or any ERISA Affiliate (as defined hereafter). These plans are referred to collectively herein as the "**Employee Plans.**" For purposes of this paragraph, "**ERISA Affiliate**" of any Person means any other person or entity which, together with that person or entity, could

be treated as a single employer under Section 414(m) of the Internal Revenue Code of 1986, as amended (the “**Code**”), or is an “affiliate,” whether or not incorporated, as defined in Section 407(d)(7) of ERISA, of the Person.

(oo) Each employment, severance or other similar arrangement or policy and each material plan or arrangement providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, severance benefits, supplemental unemployment benefits, vacation benefits, retirement benefits or for deferred compensation, profit-sharing, bonuses, stock options, stock appreciation or other forms of incentive compensation, or post-retirement insurance, compensation or benefits to which the Company or any Subsidiary is a party and which : (i) is not an Employee Plan, (ii) is entered into, maintained or contributed to, as the case may be, by the Company or any of their respective ERISA Affiliates, and (iii) covers any employee or former employee of the Company or any of their respective ERISA Affiliates (such contracts, plans and arrangements being referred to collectively in this Agreement as the “**Benefit Arrangements**”) is fully and accurately disclosed in the Registration Statement to the extent it is material and required to be disclosed by the Securities Act and the Rules and Regulations and has been maintained in substantial compliance with its terms and with requirements prescribed by any and all statutes, orders, rules and regulations that are applicable to that Benefit Arrangement.

(pp) Except as set forth in the Registration Statement, any Preliminary Prospectus or the Prospectus, there is no material liability in respect of post-retirement health and medical benefits for retired employees of the Company or any of their respective ERISA Affiliates other than medical benefits required to be continued under applicable law, determined using assumptions that are reasonable in the aggregate, over the fair market value of any fund, reserve or other assets segregated for the purpose of satisfying such liability (including for such purposes any fund established pursuant to Section 401(h) of the Code). With respect to any of the Company’s Employee Plans which are “group health plans” under Section 4980B of the Code and Section 607(1) of ERISA, there has been material compliance with all requirements imposed there under such that the Company or their respective ERISA Affiliates have no (and will not incur any) loss, assessment, tax penalty, or other sanction with respect to any such plan.

(qq) The execution of this Agreement and consummation of the Rights Offering does not constitute a triggering event under any Employee Plan or any other employment contract, whether or not legally enforceable, which (either alone or upon the occurrence of any additional or subsequent event) will or may result in any payment (of severance pay or otherwise), acceleration, increase in vesting, or increase in benefits to any current or former participant, employee or director of the Company.

(rr) No “prohibited transaction” (as defined in either Section 406 of the ERISA or Section 4975 of Code), “accumulated funding deficiency” (as defined in Section 302 of ERISA) or other event of the kind described in Section 4043(b) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) has occurred with respect to any employee benefit plan for which the Company would have any liability; each employee benefit plan of the Company is in compliance in all material respects with applicable law, including (without limitation) ERISA and the Code; the Company has not incurred and does not expect to incur liability under Title IV of ERISA with respect to

the termination of, or withdrawal from any “pension plan”; and each employee benefit plan of the Company that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could cause the loss of such qualification.

(ss) Neither the Company nor, to the Company’s knowledge, any of the Company’s officers, directors, employees or agents has at any time during the last five (5) years: (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law; or (ii) made any payment to any federal or state governmental officer or official, or other Person charged with similar public or quasi-public duties, other than payments that are not prohibited by the laws of the United States of any jurisdiction thereof.

(tt) The Company has not and will not, directly or indirectly through any officer, director or Affiliate of the Company or through any other Person: (i) taken any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Rights Shares, (ii) since the filing of the Registration Statement sold, bid for or purchased, or paid any Person (other than the Dealer-Manager) any compensation for soliciting exercises or purchases of, the Rights or the Rights Shares; and (iii) until the later of the expiration of the Rights or the completion of the distribution (within the meaning of Regulation M under the Exchange Act) of the Rights Shares, sell, bid for or purchase, apply or agree to pay to any Person (other than the Dealer-Manager) any compensation for soliciting another to purchase any other securities of the Company (except for the solicitation of the exercises of Rights pursuant to this Agreement or pursuant to the Company’s “at-the-market” offering program). The foregoing shall not apply to the offer, sale, agreement to sell or delivery with respect to: (i) Rights Shares and Rights Warrants offered and sold upon exercise of the Rights, as described in the Prospectus; or (ii) any shares of Common Stock sold pursuant to the Company’s employee benefit plans.

(uu) As used in this Agreement, references to matters being “material” with respect to the Company or any matter relating to the Company shall mean a material item, event, change, condition, status or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, prospects (as such prospects are disclosed or described in any Preliminary Prospectus or the Prospectus), operations or results of operations of the Company and its Subsidiaries, taken as a whole.

(vv) As used in this Agreement, the term “Company’s knowledge” (or similar language) shall mean the knowledge of the officers of the Company who are named in the Prospectus, with the assumption that such officers shall have made reasonable and diligent inquiry of the matters presented (with reference to what is customary and prudent for the applicable individuals in connection with the discharge by the applicable individuals of their duties as officers or directors of the Company).

(ww) Any certificate signed by or on behalf of the Company and delivered to the Dealer-Manager or to Ellenoff Grossman & Schole LLP, counsel for the Dealer-Manager, shall be deemed to be a representation and warranty by the Company to the Dealer-Manager as to the matters covered thereby.

6. Compensation of the Dealer-Manager. In consideration of the services rendered and to be rendered by the Dealer-Manager to the Company in connection with the Rights Offering, the Company agrees to pay the Dealer-Manager the following:

(i) to the Dealer-Manager, a cash fee equal to: (a) 6.0% of the total gross proceeds generated from the Rights Offering if the aggregate gross proceeds raised in the Rights Offering is less than \$7,500,000; or (b) 7.0% of the total gross proceeds generated from the Rights Offering if the aggregate gross proceeds raised in the Rights Offering is \$7,500,000 or more;

(ii) the Dealer-Manager shall receive (less the advance in the amount of \$20,000 previously paid to Maxim, the "Advance") up to \$75,000 in reimbursement of their expenses (including legal fees) if the Rights Offering occurs. Any portion of the Advance will be returned to the Company in the event it is not actually incurred. Except as provided in Section 6(ii) or Section 11, the Dealer-Manager shall be responsible for its own expenses.

7. Expenses. The Company shall pay or cause to be paid:

(a) all of its expenses (including any taxes) incurred in connection with the Rights Offering and the preparation, issuance, execution, authentication and delivery of the Rights and the Rights Shares and Rights Warrants;

(b) all fees, expenses and disbursements of the Company's accountants, legal counsel and other third party advisors;

(c) all fees and expenses of the Subscription Agent and the Information Agent set forth in the Agent Agreement;

(d) all fees, expenses and disbursements (including, without limitation, fees and expenses of the Company's accountants and counsel) in connection with the preparation, printing, filing, delivery and shipping of the Registration Statement (including the financial statements therein and all amendments and exhibits thereto), each Preliminary Prospectus, the Prospectus, the other Offer Documents and any amendments or supplements of the foregoing;

(e) all fees, expenses and disbursements relating to the registration or qualification of the Rights and the Rights Shares under the "blue sky" securities laws of any states or other jurisdictions and all fees and expenses associated with the preparation of the preliminary and final forms of Blue Sky Memoranda;

(f) all filing fees of the Commission;

(g) all filing fees relating to the review of the Rights Offering by FINRA;

- (h) any applicable listing or other fees;
- (i) the cost of printing certificates representing the Rights and the Rights Shares and Rights Warrants;
- (j) all advertising charges pertaining to the Rights Offering agreed to by the Company;
- (k) the cost and charges of the Company's transfer agent(s) or registrar(s) agreed to by the Company; and
- (l) all other costs and expenses incident to the performance of its obligations hereunder for which provision is not otherwise made in this Section.

The Company shall perform its obligations set forth in this Section 7 whether or not the Rights Offering commences or any Rights are exercised pursuant to the Rights Offering.

8. Shareholder Lists; Subscription Agent.

(a) The Company will cause the Dealer-Manager to be provided with any cards or lists showing the names and addresses of, and the number of shares of Common Stock held by, the holders of shares of Common Stock as of a recent date and will use its best efforts to cause the Dealer-Manager to be advised from time to time during the period, as the Dealer-Manager shall request, of the Rights Offering as to any transfers of record of shares of Common Stock.

(b) The Company will arrange for the Subscription Agent to advise the Dealer-Manager daily as to such matters as they may reasonably request, including the number of Rights which have been exercised pursuant to the Rights Offering.

9. Covenants. The Company covenants and agrees with the Dealer-Manager:

(a) To use its best efforts to cause the Registration Statement and any amendments thereto to become effective, provided that the Company shall have the right to discontinue the offering and withdraw the Registration Statement if the Company's Board of Directors determines in good faith that it is no longer in the best interests of the Company and its stockholders; to advise the Dealer-Manager, promptly after it receives notice thereof, of the time when the Registration Statement, or any amendment thereto, becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Dealer-Manager with copies thereof; to prepare a Prospectus in a form approved by the Dealer-Manager (such approval not to be unreasonably withheld or delayed) and to file such Prospectus pursuant to Rule 424(b) under the Securities Act within the time prescribed by such rule; to advise the Dealer-Manager, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Rights for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the

issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly its reasonable best efforts to obtain its withdrawal;

(b) To deliver promptly to the Dealer-Manager in New York City such number of the following documents as the Dealer-Manager shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement, any other Offer Documents filed as exhibits, the computation of the ratio of earnings to fixed charges and the computation of per share earnings); (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus; and (iii) any document incorporated by reference in the Prospectus (excluding exhibits thereto); and, if the delivery of a prospectus is required at any time during which the Prospectus relating to the Rights or the Rights Shares or Rights Warrants is required to be delivered under the Securities Act and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Dealer-Manager and, upon its request, to file such document and to prepare and furnish without charge to the Dealer-Manager as many copies as the Dealer-Manager may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance;

(c) To file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Company or the Dealer-Manager, be necessary or advisable in connection with the distribution of the Rights or the sale of the Underlying Shares or be requested by the Commission;

(d) Prior to filing with the Commission any: (i) Preliminary Prospectus, (ii) amendment to the Registration Statement, any document incorporated by reference in the Prospectus or (iii) any Prospectus pursuant to Rule 424 of the Rules and Regulations, to furnish a copy thereof to the Dealer-Manager and counsel for the Dealer-Manager and obtain the consent of the Dealer-Manager to the filing (which consent shall not be unreasonably withheld);

(e) Until the completion of the Rights Offering, following the effective date of the Registration Statement, to furnish to the Dealer-Manager copies of all materials not available via EDGAR furnished by the Company to its shareholders and all public reports and all reports and financial statements furnished by the Company to the principal national securities exchange upon which any of the Company's securities may be listed pursuant to requirements of or agreements with such exchange or to the Commission pursuant to the Exchange Act or any rule or regulation of the Commission thereunder;

(f) To qualify or register the Rights and the Rights Shares and Rights Warrants for sale under (or obtain exemptions from the application of) the state securities or blue sky laws of those jurisdictions designated by the Dealer-Manager, to comply with such laws and to continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Rights and the Rights Shares and Rights Warrants; provided, however, that the Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Dealer-Manager promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Rights and the Rights Shares and Rights Warrants for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(g) To apply the net proceeds from the exercise of the Rights in the manner described under the caption “Use of Proceeds” in the Prospectus.

(h) Prior to the effective date of the Registration Statement, to apply for the listing of the Rights Shares and Rights Warrants on NASDAQ and to use its best efforts to complete that listing, subject only to official notice of issuance (if applicable), prior to the expiration of the Rights Offering.

(i) To take such steps as shall be necessary to ensure that neither the Company nor any Subsidiary shall become an “investment company” within the meaning of such term under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.

(j) To advise the Dealer-Manager, directly or through the Subscription Agent, from time to time, as the Dealer-Manager shall request, of the number of Rights Shares and Rights Warrants subscribed for, and arrange for the Subscription Agent to furnish the Dealer-Manager with copies of written reports it furnishes to the Company concerning the Rights Offering;

(k) To commence mailing the Offer Documents to record holders of the Common Stock not later than the second business day following the record date for the Rights Offering, and complete such mailing as soon as practicable;

(l) To reserve and keep available for issue upon the exercise of the Rights such number of authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all Rights and all Rights Warrants issued upon such exercise in full, except as otherwise contemplated by the Prospectus; and

(m) To not take, directly or indirectly, any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Rights Shares or Rights Warrants.

10. Conditions of Dealer-Manager's Obligations. The obligations of the Dealer-Manager hereunder are subject to (and the occurrence of any Closing shall be conditioned upon) the accuracy, as of the date hereof and at all times during the Rights Offering, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder (in each case in the reasonable opinion of the Dealer-Manager) and to the following additional conditions:

(a) (i) The Registration Statement shall have become effective and the Prospectus shall have been timely filed with the Commission in accordance with the Rules and Regulations; (ii) all post-effective amendments to the Registration Statement shall have become effective; and (iii) no stop order suspending the effectiveness of the Registration Statement or any amendment or supplement thereto shall have been issued and no proceedings for the issuance of any such order shall have been initiated or threatened, and any request of the Commission for additional information (to be included in the Registration Statement or the Prospectus or otherwise) shall have been disclosed to the Dealer-Manager and complied with to the Dealer-Manager's reasonable satisfaction.

(b) The Dealer-Manager shall not have been advised by the Company or shall have discovered and disclosed to the Company that the Registration Statement or the Prospectus or any amendment or supplement thereto, contains an untrue statement of fact which in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material, or omits to state a fact which, in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Rights, the Rights Shares, the Rights Warrants, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Dealer-Manager, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(d) Concurrently with the execution of this Agreement, there shall have been furnished to the Dealer-Manager the signed opinion (addressed to the Dealer-Manager) of Latham & Watkins LLP, counsel for the Company, dated the date hereof and in form and substance satisfactory to counsel for the Dealer-Manager.

(e) Concurrently with the execution of this Agreement, there shall have been furnished to the Dealer-Manager the signed opinion (addressed to the Dealer-Manager) of Kathy Mekjian, intellectual property counsel for the Company, dated the date hereof and in form and substance satisfactory to counsel for the Dealer-Manager.

(f) Concurrently with the execution of this Agreement, the Company shall have furnished to the Dealer-Manager a letter of BDO, addressed to the Dealer-Manager and dated the date hereof: (i) confirming that they are independent registered public accountants of the Company within the meaning of the Securities Act and are in compliance with the applicable



requirements relating to the qualification of accountants under the PCAOB and applicable rules of the Commission, and (ii) stating, as of the date of the letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than five days prior to the date of the letter), the conclusions and findings of such firm with respect to the financial information and other matters specified by the Dealer-Manager.

(g) The Company shall have furnished to the Dealer-Manager a certificate, dated the date hereof and of such Closing, of its Chief Executive Officer or President and its Chief Financial Officer stating that:

(i) To the best of their knowledge after reasonable investigation, the representations, warranties, covenants and agreements of the Company in Section 5 hereof are true and correct in all material respects;

(ii) The conditions set forth in this Section 10 have been fulfilled;

(iii) Neither the Company nor any of its Subsidiaries has sustained any material loss or interference with its business, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding;

(iv) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been any Material Adverse Change or any development involving a prospective Material Adverse Change; and

(v) They have carefully examined the Registration Statement and the Prospectus and, in their opinion (A) the Registration Statement and the Prospectus, as of the Effective Date, did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (B) since the Effective Date no event has occurred which should have been set forth in a supplement or amendment to the Registration Statement or the Prospectus and has not been.

(h) Neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included in the Prospectus any Material Adverse Change, the effect of which is, in the judgment of the Dealer-Manager, so material and adverse as to make it impracticable or inadvisable to proceed with the Rights Offering.

(i) NASDAQ shall have approved the Rights Shares and Rights Warrants for listing, subject only to official notice of issuance and, with respect to the Rights Warrants, confirmation that a sufficient number of Rights have been exercised to cause a sufficient number of Rights Warrants to be issued to the number of holders necessary to meet the listing standards of NASDAQ Rule 5515, as applicable.

(j) All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Dealer-Manager. If any of the conditions specified in this Section 10 shall not have been fulfilled when and as

required by this Agreement, this Agreement and all obligations of the Dealer-Manager hereunder may be canceled at, or at any time during the Rights Offering, by the Dealer-Manager. Any such cancellation shall be without liability of the Dealer-Manager to the Company. Notice of such cancellation shall be given to the Company in writing, or by telephone and confirmed in writing.

11. Indemnification and Contribution.

(a) The Company agrees to hold harmless and indemnify Maxim and its affiliates and any officer, director, employee or agent of Maxim or any such affiliates and any Person controlling (within the meaning of Section 20(a) of the Exchange Act) Maxim or any of such affiliates from and against any and all (A) losses, claims, damages and liabilities whatsoever, under the Securities Act or otherwise (as incurred or suffered), arising out of or based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in the Offer Documents or any amendment or supplement thereto, in any other solicitation material used by the Company or authorized by it for use in connection with the Rights Offering, or in any blue sky application or other document prepared or executed by the Company (or based on any written information furnished by the Company) specifically for the purpose of qualifying any or all of the Rights or the Rights Shares or Rights Warrants under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a "Blue Sky Application") or arising out of or based upon the omission or alleged omission to state in any such document a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than statements or omissions made in reliance upon and in conformity with the Dealer-Manager Information); (ii) any withdrawal or termination by the Company of, or failure by the Company to make or consummate, the Rights Offering, (iii) actions taken or omitted to be taken by an indemnified party with the consent of the Company or in conformity with actions taken or omitted to be taken by the Company; (iv) any failure by the Company to comply with any agreement or covenant contained in this Agreement; or (v) arising out of, relating to or in connection with or alleged to arise out of, relate to or be in connection with, the Rights Offering, any of the other transactions contemplated thereby or the performance of Maxim's services to the Company with respect to the Rights Offering, and (B) all reasonable expenses (including, but not limited to, any and all reasonable legal expenses) incurred in connection with investigating, preparing to defend or defending any lawsuit, claim or other proceeding, commenced or threatened, whether or not resulting in any liability, which legal or other expenses shall be reimbursed by the Company promptly after receipt of any invoices therefore from Maxim. However, the Company will not be obligated to indemnify an indemnified party for any loss, claim, damage, liability or expense pursuant to the preceding sentence which has been determined in a final judgment by a court of competent jurisdiction to have resulted directly from willful misconduct or gross negligence on the part of any indemnified party.

(b) The Dealer-Manager shall indemnify and hold harmless the Company, its officers, directors and employees, each of its directors and each Person, if any, who controls the Company within the meaning of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company or any such director, officer or controlling Person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon: (i) any

untrue statement or alleged untrue statement of a material fact contained (A) in any Offer Documents, or in any such amendment or supplement, in any other solicitation material used by the Company or authorized by it for use in connection with the Rights Offering or (B) in any Blue Sky Application; or (ii) the omission or alleged omission to state in any Offer Documents, or in any such amendment or supplement, in any other solicitation material used by the Company or authorized by it for use in connection with the Rights Offering, or in any Blue Sky Application, any material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case solely and exclusively to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with the Dealer-Manager Information, and shall reimburse the Company and any such director, officer or controlling Person for any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling Person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred.

(c) If any lawsuit, claim or proceeding is brought against any indemnified party in respect of which indemnification may be sought against the indemnifying party pursuant to this Section 11, such indemnified party shall promptly notify the indemnifying party of the commencement of such lawsuit, claim or proceeding; provided, however, that the failure so to notify the indemnifying party shall not relieve the indemnifying party from any obligation or liability which it may have under this Section 11 except to the extent that it has been prejudiced in any material respect by such failure and in any event shall not relieve the indemnifying party from any other obligation or liability which it may have to such indemnified party otherwise than under this Section 11. In case any such lawsuit, claim or proceeding shall be brought against any indemnified party and such indemnified party shall notify the indemnifying party of the commencement of such lawsuit, claim or proceeding, the indemnifying party shall be entitled to participate in such lawsuit, claim or proceeding, and, after written notice from the indemnifying party to such indemnified party, to assume the defense of such lawsuit, claim or proceeding with counsel of its choice at its expense; provided, however, that such counsel shall be satisfactory to the indemnified party in the exercise of its reasonable judgment. Notwithstanding the election of the indemnifying party to assume the defense of such lawsuit, claim or proceeding, such indemnified party shall have the right to employ separate counsel and to participate in the defense of such lawsuit, claim or proceeding, and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel (and shall pay such reasonable fees, costs and expenses promptly after receipt of any invoice therefor) if: (i) the use of counsel chosen by the indemnifying party to represent such indemnified party would present such counsel with a conflict of interest; (ii) the defendants in, or targets of, any such lawsuit, claim or proceeding include both an indemnified party and the indemnifying party, and such indemnified party shall have reasonably concluded that there may be legal defenses available to it or to other indemnified parties which are different from or in addition to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified party); (iii) the indemnifying party shall not have employed counsel satisfactory to such indemnified party, in the exercise of such indemnified party's reasonable judgment, to represent such indemnified party within a reasonable time after notice of the institution of any such lawsuit, claim or proceeding; or (iv) the indemnifying party shall authorize such indemnified party to employ separate counsel at the expense of the indemnifying party. The foregoing indemnification commitments shall apply whether or not the indemnified

party is a formal party to any such lawsuit, claim or proceeding. The indemnifying party shall not be liable for any settlement of any lawsuit, claim or proceeding effected without its consent (which consent will not be unreasonably withheld), but if settled with such consent, the indemnifying party agrees, subject to the provisions of this Section 11, to indemnify the indemnified party from and against any loss, damage or liability by reason of such settlement. The Company agrees to notify Maxim promptly, or cause Maxim to be notified promptly, of the assertion of any lawsuit, claim or proceeding against the Company, any of its officers or directors or any Person who controls any of the foregoing within the meaning of Section 20(a) of the Exchange Act, arising out of or relating to the Rights Offering. The Company further agrees that any settlement of a lawsuit, claim or proceeding against it arising out of Rights Offering shall include an explicit and unconditional release from the parties bringing such lawsuit, claim or proceeding of Maxim, its respective affiliates, and any officer, director, employee or agent of Maxim, and any Person controlling (within the meaning of Section 20(a) of the Exchange Act) Maxim.

(d) The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating, preparing to defend or defending any such action or claim.

(e) The foregoing rights to indemnification and contribution shall be in addition to any other rights which any indemnified parties may have under common law or otherwise but shall supersede, amend and restate, retroactively, the rights to indemnification, reimbursement and contribution provided for under the Engagement Letter.

(f) In order to provide for contribution in circumstances in which the indemnification provided for in this Section 11 for any reason held to be unavailable from any indemnifying party or is insufficient to hold harmless a party indemnified thereunder, the Company, on the one hand, and Maxim, on the other hand, shall contribute to the aggregate losses, claims, damages, liabilities and expenses of the nature contemplated by such indemnification provision (including any investigation, legal and other expenses incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claims asserted, but after deducting in the case of losses, claims, damages, liabilities and expenses suffered by the Company, any contribution received by the Company from Persons, other than Maxim, who may also be liable for contribution, including Persons who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, officers of the Company who signed the Registration Statement and directors of the Company) as incurred to which the Company and Maxim may be subject, in such proportions as is appropriate to reflect the relative benefits received by the Company, on the one hand, and Maxim, on the other hand, from the Rights Offering or, if such allocation is not permitted by applicable law, in such proportions as are appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Company, on the one hand, and Maxim, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and Maxim, on the other hand, shall be deemed to be in the same proportion as: (x) the total proceeds from the Rights Offering (net of

the fees of the Dealer-Manager set forth in Section 6 hereof, but before deducting expenses) received by the Company bears to (y) the fees of the Dealer-Manager set forth in Section 6 hereof actually received by the Dealer-Manager. The relative fault of each of the Company, on the one hand, and Maxim, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or Maxim (which consists solely and exclusively of the Dealer-Manager Information) and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Dealer-Manager agree that it would not be just and equitable if contribution pursuant to this Section 11(f) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 11 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any judicial, regulatory or other legal or governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission. Notwithstanding the provisions of this Section 11: (i) the Dealer-Manager shall be required to contribute any amount in excess of the fees actually received by the Dealer-Manager from the Company in connection with the Rights Offering and (ii) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 11, each Person controlling a Dealer-Manager within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Dealer-Manager, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to clauses (i) and (ii) of the immediately preceding sentence. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties, notify each party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 11(f) or otherwise.

12. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon the later of the time on which the Dealer-Manager shall have received notification of the effectiveness of the Registration Statement and the time which this Agreement shall have been executed by all of the parties hereto.

(b) At any time during the Rights Offering, this Agreement may be terminated by the Dealer-Manager by giving notice as hereinafter provided to the Company if:

(i) the Company shall have failed, refused or been unable, at any applicable time during the Rights Offering, to perform any material agreement on its part to be performed hereunder,

(ii) any other material condition of the Dealer-Manager's obligations as set forth in Section 10 or elsewhere hereunder is not fulfilled,

(iii) trading in securities generally on the New York Stock Exchange, the Nasdaq Stock Market or the NYSE Alternext U.S. or in the OTCBB, or trading in any securities of the Company on any exchange or in the over-the-counter market, shall have been suspended or minimum prices shall have been established on any such exchanges or such market by the Commission, by such exchange or by any other regulatory body or Governmental Authority,

(iv) a banking moratorium shall have been declared by Federal or state authorities,

(v) there shall have occurred any outbreak or escalation of hostilities or acts of terrorism involving the United States or there is a declaration of a national emergency or war by the United States or there shall have been any other calamity or crisis or any change in political, financial or economic conditions of the United States, or

(vi) there shall have occurred such a material adverse change in general economic, political or financial conditions (or the effect of international conditions on the financial markets in the United States shall be such) as to make it, in the judgment of the Dealer-Manager, inadvisable or impracticable to solicit exercises of the Rights or perform any other of its obligations hereunder.

(c) At any time during the Rights Offering, this Agreement may be terminated by the Company by giving notice as hereinafter provided to the Dealer-Manager if the Company's Board of Directors determines in good faith that the Rights Offering is no longer in the best interests of the Company and its stockholders.

(d) Any termination of this Agreement pursuant to this Section 12 shall be without liability on the part of the Company or the Dealer-Manager, except as otherwise provided in Section 11 hereof. Any notice referred to above may be given at the address specified in Section 14 hereof in writing or by facsimile or telephone, and if by telephone, shall be immediately confirmed in writing.

13. Survival of Certain Provisions. The agreements contained in Section 11 hereof and the representations, warranties and agreements of the Company contained in Sections 5, 6 and 7 hereof shall survive the consummation of or failure to commence the Rights Offering and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party; *provided* however than in the event of any failure to commence or consummate the Rights Offering, the agreements contained in Section 6 shall terminate and be of no further force or effect.

14. Notices. All notices or other communications hereunder shall be in writing, and (a) if sent to the Dealer-Manager, shall be mailed, delivered, or faxed and confirmed in writing, to Maxim Group LLC, 405 Lexington, New York, New York 10174, Fax Number: (212) 895-3783, Attention: Clifford A. Teller, Executive Managing Director — Investment Banking, in each case, with a copy to Ellenoff Grossman & Schole LLP, 1345 Avenue of the Americas, 11<sup>th</sup> Floor, New York, New York, 10105 Fax Number: (212) 370-7889, Attention: Sarah Williams, Esq.; and (b) if sent to the Company shall be mailed, delivered, or faxed and confirmed in writing to the Company and its counsel at the address set forth in the Registration Statement, with a copy to Latham and Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130, Fax Number: (858) 523-5450, Attention: Cheston Larson, Esq. Any such notices and other communications shall take effect at the time of receipt thereof.

15. Parties. This Agreement shall inure to the benefit of and be binding upon the Dealer-Manager, the Company and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those Persons, except that the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the Person or Persons, if any, who control the Dealer-Manager within the meaning of Section 15 of the Act. Nothing in this Agreement shall be construed to give any Person, other than the Persons referred to in this Section, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties hereto.

17. Governing Law; Venue. This Agreement shall be deemed to have been executed and delivered in New York and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws of the State of New York, without regard to the conflicts of laws principals thereof (other than Section 5-1401 of The New York General Obligations Law). Each of the Dealer-Manager and the Company: (a) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York; (b) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding; and (c) irrevocably consents to the jurisdiction of Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Dealer-Manager and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the Dealer-Manager mailed by certified mail to the Dealer-Manager's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service process upon the Dealer-Manager, in any such suit, action or proceeding. THE COMPANY (ON BEHALF OF

ITSELF AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ON BEHALF OF ITS RESPECTIVE EQUITY HOLDERS AND CREDITORS) HEREBY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE REGISTRATION STATEMENT, ANY PRELIMINARY PROSPECTUS AND THE PROSPECTUS.

18. Entire Agreement. This Agreement, together with the exhibit attached hereto and as the same may be amended from time to time in accordance with the terms hereof, contains the entire agreement among the parties hereto relating to the subject matter hereof and there are no other or further agreements outstanding not specifically mentioned herein.

19. Severability. If any term or provision of this Agreement or the performance thereof shall be invalid or unenforceable to any extent, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by facsimile or other electronic transmission shall constitute valid and sufficient delivery thereof.

[Signature Page Follows]



If the foregoing correctly sets forth your understanding, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

Very truly yours,

CYTORI THERAPEUTICS, INC.

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

**Accepted by the Dealer-Manager  
as of the date first written above:**

MAXIM GROUP LLC

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

[Signature Page to Dealer-Manager Agreement]

**CYTORI THERAPEUTICS, INC.**  
**CERTIFICATE OF DESIGNATION OF PREFERENCES,**  
**RIGHTS AND LIMITATIONS**  
**OF**  
**SERIES B CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW

The undersigned, Marc H. Hedrick and Tiago M. Girão, do hereby certify that:

1. They are the President and Secretary, respectively, of Cytori Therapeutics, Inc., a Delaware corporation (the “Corporation”).
2. The Corporation is authorized to issue 5,000,000 shares of preferred stock, 13,500 of which have been issued and none of which are outstanding.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the “Board of Directors”):

WHEREAS, the certificate of incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 5,000,000 shares, \$0.001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of up to 10,000 shares of the preferred stock which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

**TERMS OF PREFERRED STOCK**

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(d).

“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(e).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

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“Buy-In” shall have the meaning set forth in Section 6(d)(iv).

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring Person immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Closing” means the closing of the purchase and sale of the Securities pursuant to the Dealer-Manager Agreement.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(c).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Dealer-Manager Agreement” means the dealer-manager agreement dated [\_\_\_\_], 2017, between the Corporation and Maxim Group LLC.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Dividend Payment Date” shall have the meaning set forth in Section 3(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock, options or other equity awards (including, without limitation, restricted awards) to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or

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convertible into shares of Common Stock issued and outstanding on the filing date of this Certificate, provided that such securities have not been amended since the filing date of this Certificate, to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) securities issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, and (d) securities issued pursuant to an entity as a component of any business relationship with such entity for the purpose of (i) material joint venture, licensing or development activities, (ii) distribution, supply or manufacture of the Corporation's products or services, (iii) any arrangement for the refinancing or restructuring of the Loan Agreement that shall not exceed, in the aggregate, a value of \$1,000,000 and shall be issued at or above fair market value, or (iv) acquisitions or strategic transactions, which in the case of each clause of this subsection (d) are approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall provide to the Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; provided, however, that issuances pursuant to clauses (c) and (d)(ii) herein shall not exceed, in the aggregate, a value of \$500,000 in any 12 month period.

"Fundamental Transaction" shall have the meaning set forth in Section 7(d).

"Holders" shall mean holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders").

"Issuable Maximum" shall have the meaning set forth in Section 6(f).

"Junior Securities" means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

"Liquidation" shall have the meaning set forth in Section 5.

"Loan Agreement" means that certain Loan and Security Agreement between the Corporation and Oxford Finance LLC dated May 29, 2015, as amended to date.

"New York Courts" shall have the meaning set forth in Section 8(d).

"Notice of Conversion" shall have the meaning set forth in Section 6(a).

"Original Issue Date" means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Stock" shall have the meaning set forth in Section 2.

"Pro Rata Conversion Percentage" shall mean (i) 30,000,000 divided by (ii) the number of shares of Common Stock issuable upon the conversion of the total number of shares of Preferred Stock issued in the Rights Offering.

"Rights Offering" shall mean the offering by the Corporation of non-transferable subscription rights to subscribe for and purchase units consisting of Preferred Stock and warrants pursuant to the prospectus dated [\_\_\_\_], 2017.

"Securities" means the Preferred Stock, the Warrants, the Warrant Shares and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Delivery Date" shall have the meaning set forth in Section 6(d).

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“Stated Value” shall have the meaning set forth in Section 2.

“Stockholder Approval” means approval by the stockholders of the Corporation of an amendment to the Corporation’s certificate of incorporation that increases the number of authorized shares of Common Stock from 75,000,000 shares of Common Stock to no less than 82,500,000 shares of Common Stock.

“Stockholder Approval Date” means the date on which the Stockholder Approval is obtained and deemed effective.

“Subscription Rights Certificate” shall mean, as to each Holder, the subscription rights certificate completed by such Holder and countersigned by Broadridge Corporate Issuer Solutions, Inc.

“Subsidiary” means any direct or indirect subsidiary of the Corporation.

“Successor Entity” shall have the meaning set forth in Section 7(d).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designation, the Dealer-Manager Agreement, the Voting Agreement, the Warrant Agreement, the Warrants, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated therein.

“Transfer Agent” means Computershare Trust Company, N.A., the current transfer agent of the Corporation, and any successor transfer agent of the Corporation.

“Underlying Shares” means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock and upon exercise of the Warrants.

“Variable Rate Transaction” means a transaction in which the Corporation (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Corporation or the market for the Common Stock (it being understood that anti-dilution adjustments do not make a security subject to this definition) or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Corporation may issue securities at a future determined price.

“Voting Agreement” means the written agreement, in the form of Exhibit [ ] attached to the Dealer Manager Agreement, of all of the officers, directors and stockholders holding more than 10% of the issued and outstanding shares of Common Stock on the date of the Dealer Manager Agreement to vote all Common Stock over which such Persons have voting control as of the record date for (i) the meeting of stockholders of the Corporation and (ii) the approval of all resolutions incident to the transactions contemplated by the Transaction Documents.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the

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Common Stock are then reported in the “Pink Sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

“Warrant Agreement” means the warrant agent agreement dated as of [\_\_\_\_\_], 2017, between the Corporation and Broadridge Corporate Issuer Solutions, Inc.

“Warrants” means, collectively, the Common Stock purchase warrants delivered to the Holder at the Closing in accordance with the Warrant Agreement, which Warrants shall be exercisable after the Stockholder Approval Date and have a term of exercise equal to 30 months from the Closing Date, in the form of Exhibit A attached to the Warrant Agreement.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series B Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 10,000. Each share of Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$1,000 (the “Stated Value”).

### Section 3. Dividends.

(a) Dividends in Cash. Unless prohibited by applicable law governing distributions to stockholders, from the date that is six months after the Original Issue Date (the “Stockholder Approval Deadline”) until the Stockholder Approval Date, the Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) of 10.0% per annum, payable annually in cash; *provided*, however, that such dividends will accrue, but not be payable until such time as the Loan Agreement is terminated or the secured lender party thereto consents to the payment of such dividends (the date of such termination or consent, and each anniversary of such termination or consent until the Stockholder Approval Date, a “Dividend Payment Date”). If any Dividend Payment Date is not a Trading Day, the applicable payment shall be due on the next succeeding Trading Day. In addition, the Holders shall not be entitled to receive dividends on the number of their respective shares of Preferred Stock calculated by multiplying the number of shares of Preferred Stock purchased by such Holder in the Rights Offering by the Pro Rata Conversion Percentage (rounded down to the nearest whole share). Following the Stockholder Approval Date, Holders shall not be entitled to receive any dividends in respect of the Preferred Stock, unless and until specifically declared by the Board of Directors of the Corporation to be payable to the Holders.

(b) Dividend Calculations. Dividends on the Preferred Stock shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Stockholder Approval Deadline, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Dividends shall cease to accrue on and after the Stockholder Approval Date.

(c) Late Fees. Any dividends that are not paid within three Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 12% per annum or the lesser rate permitted by applicable law which shall accrue daily from the Dividend Payment Date through and including the date of actual payment in full.

(d) Other Securities. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon (other than a dividend or distribution described in Section 6 or dividends due and paid in the ordinary course on preferred stock of the Corporation at such times when the Corporation is in compliance with its payment and other obligations hereunder), nor shall any distribution be made in

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respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

(e) Special Reserves. The Corporation acknowledges and agrees that the capital of the Corporation (as such term is used in Section 170 of the Delaware General Corporation Law) in respect of the Preferred Stock and any future issuances of the Corporation's capital stock shall be equal to the aggregate par value of such Preferred Stock or capital stock, as the case may be, and that, on or after the date of the Dealer-Manager Agreement, it shall not increase the capital of the Corporation with respect to any shares of the Corporation's capital stock issued and outstanding on such date. The Corporation also acknowledges and agrees that it shall not create any special reserves under Section 171 of the Delaware General Corporation Law without the prior written consent of each Holder.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (c) increase the number of authorized shares of Preferred Stock, or (d) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. A Fundamental Transaction or Change of Control Transaction shall not be deemed a Liquidation. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

#### Section 6. Conversion.

a) Optional Conversion. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof or at the option of the Corporation, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(e) and Section 6(f)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date or the date of the Corporation effects optional conversion, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

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b) Automatic Conversion. Upon the Stockholder Approval Date, each share of Preferred Stock shall automatically be converted, without any additional approval or election of either the Holders or the Corporation being required, into that number of shares of Common Stock (subject to the limitation set forth in Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price.

c) Conversion Price. The conversion price for the Preferred Stock shall equal \$0.40, subject to adjustment herein (the "Conversion Price").

d) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than three (3) Trading Days after each Conversion Date or the Stockholder Approval Date (the "Share Delivery Date"), the Corporation shall deliver, or cause to be delivered, to the converting Holder (A) the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions if there is an effective registration statement or an exemption from registration under the Securities Act, and (B) a bank check in the amount of accrued and unpaid dividends (if the Corporation is required to pay accrued dividends in cash). The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

iii. Obligation Absolute; Partial Liquidated Damages. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(d)(i) on the second Trading Day after the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after such second Trading Day after

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the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(d)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Warrant Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

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vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

e) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock or the Warrants) beneficially owned by such Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(e) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon not less than 61 days' prior notice to the Corporation,

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may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(e) shall continue to apply. Any such increase or decrease will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

f) Issuance Limitations. Notwithstanding anything herein to the contrary, prior to the Stockholder Approval Date, the Corporation may not issue, upon conversion of the Preferred Stock, a number of shares of Common Stock which, when aggregated with any shares of Common Stock issued on or after the Original Issue Date and prior to such Conversion Date in connection with any conversion of Preferred Stock issued pursuant to the Dealer-Manager Agreement would exceed 30,000,000 shares of Common Stock (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) (such number of shares, the “Issuable Maximum”). Each Holder shall be entitled to convert that number of their respective shares of Preferred Stock calculated by multiplying the number of shares of Preferred Stock purchased by such Holder in the Rights Offering by the Pro Rata Conversion Percentage (rounded down to the nearest whole share). For avoidance of doubt, unless and until the Stockholder Approval Date, warrants issued to any registered broker-dealer as a fee in connection with the Securities issued pursuant to the Dealer-Manager Agreement above shall provide that such warrants shall not be allocated any portion of the Issuable Maximum and shall be unexercisable unless and until such Stockholder Approval is obtained and effective.

#### Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions that is payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. From the Original Issue Date until the date following the Stockholder Approval Date on which (a) for 20 consecutive Trading Days, the VWAP for each Trading Day exceeds 200% of the then effective Conversion Price and (b) on such 20 consecutive Trading Days, the daily dollar trading volume exceeds \$500,000 on each Trading Day, if the Corporation or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to

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warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether a Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion

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immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(e) and Section 6(f) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(e) and Section 6(f) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

e) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

f) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the

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Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally or sent by a nationally recognized overnight courier service and by facsimile or e-mail, addressed to the Corporation, at the address set forth above Attention: Tiago M. Girão, facsimile number (858) 450-4335, or e-mail to LegalDepartment@cytori.com, or such other facsimile number, e-mail or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in such Holder's Subscription Rights Certificate. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

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c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, stockholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Dealer-Manager Agreement. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but

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unissued shares of preferred stock and shall no longer be designated as Series B Convertible Preferred Stock.

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RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this     day of 2017.

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Name: Marc H. Hedrick

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Name: Tiago M. Girão

Title: President

Title: Secretary

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ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series B Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "Common Stock"), of Cytori Therapeutics, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Dealer-Manager Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion:

\_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion:

\_\_\_\_\_

Number of shares of Preferred Stock to be Converted:

\_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted:

\_\_\_\_\_

Number of shares of Common Stock to be Issued:

\_\_\_\_\_

Applicable Conversion Price:

\_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion:

\_\_\_\_\_

Address for Delivery:

\_\_\_\_\_

or

DWAC Instructions:

Broker no:

\_\_\_\_\_

Account no:

\_\_\_\_\_

[HOLDER]

By:

\_\_\_\_\_

Name:

Title:

## [Form of Warrant Certificate]

[FACE]

Number: S-\_\_\_\_\_

Series S Warrants to purchase \_\_\_\_\_ shares

**THIS WARRANT SHALL BE VOID IF NOT EXERCISED PRIOR TO  
THE EXPIRATION OF THE EXERCISE PERIOD PROVIDED FOR  
IN THE WARRANT AGREEMENT DESCRIBED BELOW**

**CYTORI THERAPEUTICS, INC.**

*Incorporated Under the Laws of the State of Delaware*

CUSIP [     ]

**Series S Warrant Certificate**

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants entitling the holder on exercise to receive shares of Common Stock and are issued or to be issued pursuant to a Warrant Agreement dated as of [\_\_\_\_\_], 2017 (the "**Warrant Agreement**"), duly executed and delivered by the Company to Broadridge Corporate Issuer Solutions, Inc., a corporation having its principal offices in Philadelphia, Pennsylvania, as warrant agent (the "**Warrant Agent**"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "**holders**" or "**holder**" meaning the Registered Holders or Registered Holder) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Warrants may be exercised at any time during the Exercise Period set forth in the Warrant Agreement. Notwithstanding the foregoing or anything else herein or in the Warrant Agreement to the contrary, for so long as the holder continues to hold the Warrant, such holder shall not enter into any short sale or similar transaction with respect to the Common Stock. The holder of Warrants evidenced by this Warrant Certificate may exercise them by delivering (i) this Warrant Certificate, or, in the case of a Book-Entry Warrant Certificate (as defined in the Warrant Agreement), the Warrants to be exercised (the "**Book-Entry Warrants**") as shown on the records of The Depository Trust Company (the "**Depository**") to an account of the Warrant Agent at the Depository designated for such purpose in writing by the Warrant Agent to the Depository, (ii) an election to purchase ("**Exercise Notice**"), properly executed by the holder hereof on the reverse of this Warrant Certificate or properly executed by the institution in whose account the Warrant is recorded on the records of the Depository (the "**Participant**"), and substantially in the form included on the reverse of this Warrant Certificate and (iii) the Warrant Price for each Warrant to be exercised in lawful money of the United States by certified or official bank check or by bank wire transfer in immediately available funds, in each case payable to the Warrant Agent, unless a "**cashless exercise**" is permitted under the Warrant Agreement.

In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or his, her or its assignee, a new Warrant Certificate evidencing the number of Warrants not exercised. If fewer than all the Warrants evidenced by a Book-Entry Warrant Certificate are exercised, a notation shall be made to the records maintained by the Depository, its nominee for each Book-Entry Warrant Certificate, or a Participant, as appropriate, evidencing the balance of the Warrants remaining after such exercise.

Notwithstanding anything else in this Warrant Certificate or the Warrant Agreement, no Warrant may be exercised unless at the time of exercise (i) a registration statement covering the shares of Common Stock to be issued upon exercise is effective under the Securities Act and (ii) a prospectus thereunder relating to the shares of Common Stock is current, except through "**cashless exercise**" as provided for in the Warrant Agreement.

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The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock issuable upon exercise of the Warrants set forth on the face hereof may, subject to certain conditions, be adjusted. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a fractional interest in a share of Common Stock, the Company shall, upon exercise, either round up to the nearest whole number of shares of Common Stock to be issued to the holder of the Warrant or pay such holder cash for such fractional share in the Company's sole discretion.

Warrant Certificates, when surrendered at the office of the Warrant Agent designated for such purposes by the Registered Holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the Registered Holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a stockholder of the Company.

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NOTICE OF EXERCISE

(To Be Executed Upon Exercise of Warrant)

CASH EXERCISE:

The undersigned hereby irrevocably elects to exercise the rights represented by this Warrant Certificate to receive \_\_\_\_\_ shares of Common Stock and herewith tenders payment for such shares to the order of Cytori Therapeutics, Inc. (the "Company") in the amount of \$ \_\_\_\_\_ in accordance with the terms hereof. The undersigned requests that a certificate for such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such shares be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_. If said number of shares is less than all of the shares of Common Stock purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such Warrant Certificate be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_.

CASHLESS EXERCISE:

In the event that the Warrant may be exercised, to the extent allowed by the Warrant Agreement, through cashless exercise, (i) the number of shares that this Warrant is exercisable for would be determined in accordance with section 3.3.2 of the Warrant Agreement which allows for such cashless exercise and (ii) the holder hereof shall complete the following:

The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, through the cashless exercise provisions of the Warrant Agreement, to receive shares of Common Stock. If said number of shares is less than all of the shares of Common Stock purchasable hereunder (after giving effect to the cashless exercise), the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such Warrant Certificate be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_.

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

(Signature)

(Address)

(Tax Identification Number)

**Signature must conform in all respects to the name of the holder as specified on the face of this Warrant Certificate. If Warrant Shares, or a Warrant Certificate evidencing unexercised Warrants, are to be issued in a name other than that of the registered holder hereof or are to be delivered to an address other than the address of such holder as shown on the books of the Warrant Agent, the above signature must be guaranteed by a an Eligible Guarantor Institution (as that term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended).**

Signature Guaranteed:

**THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO RULE 17Ad-15).**

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ASSIGNMENT

(FORM OF ASSIGNMENT TO BE EXECUTED IF WARRANT HOLDER  
DESIRES TO TRANSFER WARRANTS EVIDENCED HEREBY)

FOR VALUE RECEIVED, \_\_\_\_\_ HEREBY SELL(S), ASSIGN(S) AND TRANSFER(S) UNTO

(Please insert social security or  
other identifying number of assignee)

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

the rights represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer said Warrant Certificate on the books of the Warrant Agent with full power of substitution in the premises.

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

(Signature)

(Address)

(Tax Identification Number)

**Signature must conform in all respects to the name of the holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by an Eligible Guarantor Institution (as that term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended).**

Signature Guaranteed:

**THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO RULE 17Ad-15).**

## FORM OF NON-TRANSFERABLE SUBSCRIPTION RIGHTS CERTIFICATE

RIGHTS CERTIFICATE # [\_\_\_\_\_]

NUMBER OF RIGHTS: [\_\_\_\_\_]

THE TERMS AND CONDITIONS OF THE RIGHTS OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED [\_\_\_\_], 2017 (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC., THE INFORMATION AGENT.

**CYTORI THERAPEUTICS, INC.**  
**(Incorporated under the laws of the State of Delaware)**

**SUBSCRIPTION RIGHTS CERTIFICATE**

Evidencing non-transferable Subscription Rights, each to purchase Units of Cytori Therapeutics, Inc.,  
each Unit consisting of one share of Series B Preferred Stock and 1,250 warrants  
Subscription Price: \$1,000 per Unit

THE SUBSCRIPTION RIGHTS WILL EXPIRE IF NOT EXERCISED ON OR BEFORE 5:00 P.M., EASTERN TIME, ON NOVEMBER 21, 2017,  
SUBJECT TO EXTENSION OR EARLIER TERMINATION.

## THIS CERTIFIES THAT

the registered owner whose name is inscribed hereon is the owner of the number of subscription rights ("**Subscription Rights**") set forth above. Each Subscription Right entitles the holder thereof to subscribe for and purchase (the "**Basic Subscription Right**") one Unit of Cytori Therapeutics, a Delaware corporation (the "**Company**"), at a subscription price of \$1,000 per Unit (the "**Subscription Price**"), pursuant to a rights offering (the "**Rights Offering**"), on the terms and subject to the conditions set forth in the Prospectus and the "Instructions as to Use of Cytori Therapeutics, Inc. Subscription Rights Certificates" accompanying this Subscription Rights Certificate. Each Unit consists of one share of Series B Preferred Stock, par value of \$0.001, and 1,250 warrants. Each warrant will be exercisable for one share of our common stock, par value of \$0.001. Holders who fully exercise their Basic Subscription Rights are entitled to subscribe for additional Units that remain unsubscribed for as a result of any unexercised Basic Subscription Rights pursuant to the terms and conditions of the Rights Offering, subject to proration and stock ownership limitations, as described in the Prospectus (the "**Over-subscription Privilege**"). The Subscription Rights represented by this Subscription Rights Certificate may be exercised by completing the appropriate forms on the reverse side hereof and by returning the full payment of the subscription price for each Unit. If the subscriber attempts to exercise its Over-subscription Privilege and the Company is unable to issue the subscriber the full amount of Units requested, the Subscription Agent will return to the subscriber any excess funds submitted as soon as practicable, without interest or deduction.

This Subscription Rights Certificate is not valid unless countersigned by Broadridge Corporate Issuer Solutions, Inc., the Subscription Agent.

WITNESS the seal of Cytori Therapeutics, Inc. and the signatures of its duly authorized officers.

Dated: [\_\_\_\_], 2017

Marc H. Hedrick, M.D., President & Chief Executive Officer

Tiago Girão, VP of Finance and Chief Financial Officer

COUNTERSIGNED AND REGISTERED:

By:

Broadridge Corporate Issuer Solutions, Inc.

**FORM ELECTION TO PURCHASE**

**PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY.**

The registered holder of this Subscription Rights Certificate is entitled to exercise the number of Subscription Rights shown in the upper right hand corner of the Subscription Rights Certificate and may subscribe for additional Units upon the terms and conditions specified in the Prospectus. The undersigned hereby represents, in connection with this election, that the undersigned has not since the Record Date entered into any short sale or similar transaction with respect to the common stock of Cytori Therapeutics, Inc. The undersigned hereby notifies the Subscription Agent of its irrevocable election to subscribe for Units in the following amounts. To subscribe for Units pursuant to your Basic Subscription Right, please complete lines (a) and (c) below. To subscribe for additional Units pursuant to your Over-subscription Privilege, please also complete line (b).

**(a) EXERCISE OF BASIC SUBSCRIPTION RIGHT:**

Basic Subscription Right:	X	\$1,000	=	\$
Number of Units		Subscription price		Payment enclosed

**(b) EXERCISE OF OVER-SUBSCRIPTION PRIVILEGE:** If you have exercised your Basic Subscription Right in full, you may subscribe for additional Units pursuant to your Over-subscription Privilege

Over-Subscription Privilege:	X	\$1,000	=	\$
Number of Units		Subscription price		Payment enclosed

**(c) TOTAL AMOUNT OF PAYMENT ENCLOSED \$ \_\_\_\_\_**

**(d) IF YOU SPOKE WITH A BROKER WHO SOLICITED SUCH EXERCISE, PLEASE INDICATE THE NAME OF THE PERSON YOU SPOKE WITH: \_\_\_\_\_**

**METHOD OF PAYMENT (CHECK ONE):**

- CERTIFIED CHECK DRAWN ON A U.S. BANK, payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc."
  - Wire transfer of immediately available funds directly to the account maintained by Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent, for purposes of accepting subscriptions in this Rights Offering at \_\_\_\_\_, ABA: \_\_\_\_\_, Account #: \_\_\_\_\_ FBO Cytori Therapeutics, Inc., with reference to the name of the Subscription Rights holder.
  - U.S. POSTAL MONEY ORDER, payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc."
  - UNCERTIFIED PERSONAL CHECK, payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc." (which must clear before the Expiration Date to be considered a valid form of payment; please see Prospectus and Instructions)
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I acknowledge receipt of the Prospectus in connection with the Rights Offering and agree to its terms. I agree to cooperate with the Company and provide to the Company any and all information requested by the Company in connection with the exercise of the Subscription Rights.

\_\_\_\_\_  
Signature(s) of Subscriber(s)

\_\_\_\_\_  
Signature(s) of Subscriber(s)

Address:

Address:

**IMPORTANT: THE SIGNATURE(S) MUST CORRESPOND IN EVERY PARTICULAR, WITHOUT ALTERATION, WITH THE NAME(S) AS PRINTED ON THE FRONT OF THIS RIGHTS CERTIFICATE.** If signature is by trustee(s), executor(s), administrator(s), guardian(s), attorney(s)-in-fact, officer(s) of a corporation or another acting in a fiduciary or representative capacity, please print name and title of authorized signer.

FOR INSTRUCTIONS ON THE USE OF CYTORI THERAPEUTICS, INC. SUBSCRIPTION RIGHTS CERTIFICATES, CONSULT BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC., THE INFORMATION AGENT, AT (855) 793-5068 (TOLL FREE).

## WARRANT AGENT AGREEMENT

WARRANT AGENT AGREEMENT made as of \_\_\_\_\_, 2017 ("Issuance Date"), between Cytori Therapeutics, Inc., a Delaware corporation (the "Company"), and Broadridge Corporate Issuer Solutions, Inc., a corporation having its principal offices in Philadelphia, Pennsylvania (the "Warrant Agent").

WHEREAS, the Company is engaged in a public rights offering (the "Offering") of the Company's Series B Preferred Stock, par value \$0.001 per share ("Preferred Stock"), together with Warrants (as defined below) to purchase common stock, par value \$0.001 per share ("Common Stock") and, in connection therewith, has distributed to holders of its Common Stock rights to subscribe to purchase units in the Offering (the "Units"). Each Unit consists of one share of Preferred Stock (the "Shares") and 1,250 "Series S" warrants (the "Warrants" and, together with the Units, the Shares and the Warrant Shares (as defined below), the "Securities"). Each Warrant entitles the holder thereof to purchase one share of Common Stock at an exercise price of \$0.48 per share, subject to adjustment as described herein; and

WHEREAS, the Company has filed with the U.S. Securities and Exchange Commission a Registration Statement, No. 333-219967 on Form S-1 (as the same may be amended from time to time, the "Registration Statement") for the registration, under the Securities Act of 1933, as amended (the "Act") of the Securities, including the Warrants and the Common Stock issuable upon exercise of the Warrants (the "Warrant Shares"); and

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, registration, transfer, exchange and exercise of the Warrants; and

WHEREAS, the Company desires to provide for the form and provisions of the Warrants, the terms upon which they shall be issued and exercised, and the respective rights, limitation of rights, and immunities of the Company, the Warrant Agent, and the holders of the Warrants or if the Warrants are held in "street name", a Participant (as defined below) or a designee appointed by such Participant (each, a "Holder" or "Registered Holder"); and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants, when executed on behalf of the Company and countersigned by or on behalf of the Warrant Agent, as provided herein, the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Warrant Agreement.

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

1. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company for the Warrants, and the Warrant Agent hereby accepts such appointment and agrees to perform the same in accordance with the terms and conditions set forth in this Warrant Agreement.

2. Warrants.

2.1 Form of Warrant. Each Warrant shall be issued in registered form only, shall be in substantially the form of Exhibit A hereto, the provisions of which are incorporated herein, and shall be signed by, or bear the facsimile or electronic signature of, the Chief Executive Officer, President, Chief Financial Officer or Treasurer, Secretary or Assistant Secretary of the Company. In the event the person whose facsimile signature has been placed upon any Warrant shall have ceased to serve in the capacity in which such person signed the Warrant before such Warrant is issued, it may be issued with the same effect as if he or she had not ceased to be such at the date of issuance. All of the Warrants shall initially be represented by one or more book-entry certificates (each a "Book-Entry Warrant Certificate").

2.2 Effect of Countersignature. Unless and until countersigned by the Warrant Agent pursuant to this Warrant Agreement, a Warrant shall be invalid and of no effect and may not be exercised by the holder thereof.

### 2.3. Registration.

2.3.1. Warrant Register. The Warrant Agent shall maintain books ("Warrant Register"), for the registration of original issuance and the registration of transfer of the Warrants. Upon the initial issuance of the Warrants, the Warrant Agent shall issue and register the Warrants in the names of the respective holders thereof in such denominations and otherwise in accordance with instructions delivered to the Warrant Agent by the Company. To the extent the Warrants are eligible for the book entry and depository services of The Depository Trust Company ("DTC eligible") as of the Issuance Date, all of the Warrants shall be represented by one or more Book-Entry Warrant Certificates deposited with The Depository Trust Company (the "Depository") and registered in the name of Cede & Co., a nominee of the Depository. Ownership of beneficial interests in the Book-Entry Warrant Certificates shall be shown on, and the transfer of such ownership shall be effected through, records maintained (i) by the Depository or its nominee for each Book-Entry Warrant Certificate; (ii) by institutions that have accounts with the Depository (such institution, with respect to a Warrant in its account, a "Participant"); or (iii) directly on the book-entry records of the Warrant Agent with respect only to owners of beneficial interests represented by such direct registration.

If the Warrants are not DTC eligible as of the Issuance Date or the Depository subsequently ceases to make its book-entry settlement system available for the Warrants, the Company may instruct the Warrant Agent regarding making other arrangements for book-entry settlement within ten (10) days after the Depository ceases to make its book-entry settlement available. In the event that the Company does not make alternative arrangements for book-entry settlement within ten (10) days or the Warrants are not eligible for, or it is no longer necessary to have the Warrants available in, book-entry form, the Warrant Agent shall provide written instructions to the Depository to deliver to the Warrant Agent for cancellation each Book-Entry Warrant Certificate, and the Company shall instruct the Warrant Agent to deliver to the Depository definitive certificates ("Warrant Certificates") in physical form evidencing such Warrants. Such Warrant Certificates shall be in substantially the form annexed hereto as Exhibit A.

2.3.2. Beneficial Owner; Registered Holder. The term "beneficial owner" shall mean any person in whose name ownership of a beneficial interest in the Warrants evidenced by a Book-Entry Warrant Certificate is recorded in the records maintained by the Depository or its nominee. Prior to due presentment for registration of transfer of any Warrant, the Company and the Warrant Agent may deem and treat the person in whose name such Warrant shall be registered upon the Warrant Register ("registered holder"), as the absolute owner of such Warrant and of each Warrant represented thereby (notwithstanding any notation of ownership or other writing on the Warrant Certificate made by anyone other than the Company or the Warrant Agent), for the purpose of any exercise thereof and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

2.4. FAST Program. If the Company's transfer agent is not participating in the Depository's Fast Automated Securities Transfer Program and the registered holder requests that the shares of Common Stock be issued or registered to a holder other than the registered holder, then an ink-original Election to Purchase and a medallion guarantee shall be required.

2.5 Separate Transferability of Warrants. The Warrants will be issued as a separate security from any Preferred Stock issued concurrently in the offering of the Warrants and will be separately transferable immediately upon issuance.

2.6 Uncertificated Warrants. Notwithstanding the foregoing and anything else herein to the contrary, the Warrants may be issued in uncertificated form.

### 3. Terms and Exercise of Warrants.

3.1. Exercise Price. Each Warrant shall, when countersigned by the Warrant Agent, entitle the registered holder thereof, subject to the provisions of such Warrant and of this Warrant Agreement, to purchase from the Company the number of shares of Common Stock stated therein, at the price of \$0.48 per whole share, subject to the subsequent adjustments provided in Section 5 hereof. The term "Exercise Price" as used in this Warrant Agreement refers to the price per share at which Common Stock may be purchased at the time a Warrant is exercised.

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3.2. Duration of Warrants. A Warrant may be exercised only during the period ("Exercise Period") commencing on the date the Company obtains stockholder approval of an amendment to the Company's certificate of incorporation to increase the Company's authorized shares of Common Stock and terminating at 5:00 P.M., New York City time on the date that is thirty (30) months after the Issuance Date ("Expiration Date") *provided, however*, that the exercise of any Warrant shall be subject to the satisfaction of any applicable conditions, as set forth in Section 3.3.7 or with respect to an effective registration statement. Each Warrant not exercised on or before the Expiration Date shall become void, and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease at 5:00 P.M. New York City time on the Expiration Date. Notwithstanding the foregoing or anything else herein to the contrary, for so long as the holder continues to hold a Warrant, such holder shall not enter into any short sale or similar transaction with respect to the Common Stock. Any violation of this provision may result in the Warrant being terminated at the Company's option.

3.3. Exercise of Warrants.

3.3.1. Exercise and Payment. A registered holder may exercise a Warrant by delivering, not later than 5:00 P.M., New York City time, on any business day during the Exercise Period (the "Exercise Date") to the Warrant Agent at its corporate trust department (i) the Warrant Certificate evidencing the Warrants to be exercised, or, in the case of a Book-Entry Warrant Certificate, the Warrants to be exercised (the "Book-Entry Warrants") shown on the records of the Depository to an account of the Warrant Agent at the Depository designated for such purpose in writing by the Warrant Agent to the Depository from time to time, (ii) an election to purchase the Warrant Shares underlying the Warrants to be exercised ("Election to Purchase"), properly completed and executed by the registered holder on the reverse of the Warrant Certificate or, in the case of a Book-Entry Warrant Certificate, properly delivered by the Participant in accordance with the Depository's procedures, and (iii) the Exercise Price for each Warrant to be exercised in lawful money of the United States of America by certified or official bank check or by bank wire transfer in immediately available funds. The Registered Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder.

If any of (A) the Warrant Certificate or the Book-Entry Warrants, (B) the Election to Purchase, or (C) the Exercise Price therefor, is received by the Warrant Agent after 5:00 P.M., New York City time, on the specified Exercise Date, the Warrants will be deemed to be received and exercised on the business day next succeeding the Exercise Date. If the date specified as the Exercise Date is not a business day, the Warrants will be deemed to be received and exercised on the next succeeding day that is a business day. If the Warrants are received or deemed to be received after the Expiration Date, the exercise thereof will be null and void and any funds delivered to the Warrant Agent will be returned to the registered holder or Participant, as the case may be, as soon as practicable. In no event will interest accrue on funds deposited with the Warrant Agent in respect of an exercise or attempted exercise of Warrants. The validity of any exercise of Warrants will be determined by the Company in its sole discretion and such determination will be final and binding upon the registered holder or Participant, as applicable, and the Warrant Agent. Neither the Company nor the Warrant Agent shall have any obligation to inform a registered holder or the Participant, as applicable, of the invalidity of any exercise of Warrants.

The Warrant Agent shall deposit all funds received by it in payment of the Exercise Price in the account of the Company maintained with the Warrant Agent for such purpose and shall confirm the balance in the account at any time following such request from the Company.

3.3.2. Issuance of Certificates. The Warrant Agent shall, by 11:00 A.M. New York City time on the third business day following the Exercise Date of any Warrant, advise the Company or the transfer agent and registrar in respect of (a) the Warrant Shares issuable upon such exercise as to the number of Warrants exercised in accordance with the terms and conditions of this Agreement, (b) the instructions of each registered holder or Participant, as the case may be, with respect to delivery of the Warrant Shares issuable upon such exercise, and the delivery of definitive Warrant Certificates, as appropriate, evidencing the balance, if any, of the Warrants remaining after such exercise, (c) in case of a Book-Entry Warrant Certificate, the notation that shall be made to the records maintained by the Depository, its nominee for each Book-Entry Warrant Certificate, or a Participant, as appropriate, evidencing the balance, if any, of the Warrants remaining after such exercise and (d) such other information as the Company or such transfer agent and registrar shall reasonably require.

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The Company shall, by 5:00 P.M., New York City time, on the third business day next succeeding the Exercise Date of any Warrant and the clearance of the funds in payment of the Exercise Price, execute, issue and deliver to the Warrant Agent the Warrant Shares to which such registered holder or Participant, as the case may be, is entitled, in fully registered form, registered in such name or names as may be directed by such registered holder or the Participant, as the case may be. Upon receipt of such Warrant Shares, the Warrant Agent shall, by 5:00 P.M., New York City time, on the fifth Business Day next succeeding such Exercise Date, transmit such Warrant Shares to or upon the order of the registered holder or Participant, as the case may be.

In lieu of delivering physical certificates representing the Warrant Shares issuable upon exercise, provided the Company's transfer agent is participating in the Depository's Fast Automated Securities Transfer program, the Company shall use its reasonable best efforts to cause its transfer agent to electronically transmit the Warrant Shares issuable upon exercise to the Depository by crediting the account of the Depository or of the Participant through its Deposit Withdrawal Agent Commission system. The time periods for delivery described in the immediately preceding paragraph shall apply to the electronic transmittals described herein. If the Company's transfer agent is not participating in the Depository's Fast Automated Securities Transfer Program and the Registered Holder requests that the shares of Common Stock be issued or registered to a holder other than the registered holder, then an ink-original Election to Purchase and a medallion guarantee shall be required.

3.3.3. Valid Issuance. All shares of Common Stock issued upon the proper exercise of a Warrant in conformity with this Warrant Agreement shall be validly issued, fully paid and nonassessable.

3.3.4. No Fractional Exercise. Warrants may be exercised only in whole numbers of Warrant Shares. No fractional Warrant Shares are to be issued upon the exercise of the Warrant, but rather the number of Warrant Shares to be issued shall be rounded up to the nearest whole number. If fewer than all of the Warrants evidenced by a Warrant Certificate are exercised, a new Warrant Certificate for the number of unexercised Warrants remaining shall be executed by the Company and countersigned by the Warrant Agent as provided in Section 2 of this Warrant Agreement, and delivered to the holder of this Warrant Certificate at the address specified on the books of the Warrant Agent or as otherwise specified by such registered holder. If fewer than all the Warrants evidenced by a Book-Entry Warrant Certificate are exercised, a notation shall be made to the records maintained by the Depository, its nominee for each Book-Entry Warrant Certificate, or a Participant, as appropriate, evidencing the balance of the Warrants remaining after such exercise.

3.3.5. No Transfer Taxes. The Company shall not be required to pay any stamp or other tax or governmental charge required to be paid in connection with any transfer involved in the issue of the Warrant Shares upon the exercise of Warrants; and in the event that any such transfer is involved, the Company shall not be required to issue or deliver any Warrant Shares until such tax or other charge shall have been paid or it has been established to the Company's satisfaction that no such tax or other charge is due.

3.3.6. Date of Issuance. Each person in whose name any such certificate for shares of Common Stock is issued or to whom shares of Common Stock are credited to such person's account at the Depository shall for all purposes be deemed to have become the holder of record of such Common Stock as of the time that a duly executed Election to Purchase is delivered in accordance with Section 3.3.1, provided that, in the case of a cash exercise, payment of the Aggregate Exercise Price is made within two (2) Trading Days after the delivery of the Election to Purchase, and if the payment of the Aggregate Exercise Price is not made within two (2) Trading Days after the delivery of the Election to Purchase, the Holder shall be deemed to have become the holder of record of such Common Stock on the first Trading Day after the date on which the Aggregate Exercise Price has been paid, irrespective of the date of delivery of such certificate or the date the shares of Common Stock are credited to such person's account at the Depository, except that, if the date of such delivery and/or payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

3.3.7. Cashless Exercise Under Certain Circumstances.

(i) The Company shall provide to the registered holder prompt written notice of any time that the Company is unable to issue the Warrant Shares via a transfer effected by the Depository or otherwise (without restrictive legend), because (A) the Commission has issued a stop order with respect to the Registration Statement, (B) the Commission otherwise has suspended or withdrawn the effectiveness of the Registration Statement, either

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temporarily or permanently, (C) the Company has suspended or withdrawn the effectiveness of the Registration Statement, either temporarily or permanently, or (D) otherwise (each a "Restrictive Legend Event"). To the extent that a Restrictive Legend Event occurs after the registered holder has exercised a Warrant in accordance with the terms of the Warrants but prior to the delivery of the Warrant Shares, the Company shall, at the election of the registered holder to be given within five (5) days of receipt of notice of the Restrictive Legend Event, either (A) rescind the previously submitted Election to Purchase and the Company shall return all consideration paid by registered holder for such shares upon such rescission or (B) treat the attempted exercise as a cashless exercise as described in the next paragraph and refund the cash portion of the exercise price to the registered holder.

(ii) If a Restrictive Legend Event has occurred and no exemption from the registration requirements is available, the Warrant shall only be exercisable on a cashless basis. Notwithstanding anything herein to the contrary, the Company shall not be required to make any cash payments or net cash settlement to the registered holder in lieu of issuance of the Warrant Shares. Upon a "cashless exercise", the Holder shall be entitled to receive a certificate (or book entry) for the number of Warrant Shares equal to the quotient obtained by dividing  $[(A \times B) - (A \times C)]$  by (B), where:

- (A) = the total number of shares with respect to which this Warrant is then being exercised;
- (B) = the arithmetic average of the Closing Sale Prices (as defined below) of the Common Stock for the five (5) consecutive trading days ending on the date immediately preceding the date of the Election to Purchase; and
- (X) = the Exercise Price then in effect for the applicable shares of Common Stock at the time of such exercise.

Upon receipt of an Election to Purchase for a cashless exercise, the Warrant Agent will promptly deliver a copy of the Election to Purchase to the Company to confirm the number of Warrant Shares issuable in connection with the cashless exercise. The Company shall calculate and transmit to the Warrant Agent, and the Warrant Agent shall have no obligation under this section to calculate, the number of Warrant Shares issuable in connection with the cashless exercise.

"Closing Sale Price" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the NASDAQ Capital Market, as reported by Bloomberg, or, if the NASDAQ Capital Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the NASDAQ Capital Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as determined in good faith by the Company. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

3.3.8 Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the registered holder the number of Warrant Shares that are not disputed.

4. Share Delivery Failure. If the Company shall fail, for any reason or for no reason, to issue to the Holder within three (3) trading days after receipt of the applicable Election to Purchase (the "Share Delivery Deadline"), a certificate for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of a Warrant or credit the Holder's balance account with the Depository for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant (as the case may be, but in each case without a restrictive legend) (a "Delivery Failure"), and if on or after such Share Delivery Deadline the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of

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a sale by the Holder of all or any portion of the number of shares of Common Stock issuable upon such exercise that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to it, the Company shall, within three (3) Business Days (as defined below) after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to 100% of the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other person in respect, or on behalf, of the Holder) (the "Buy-In Price"), at which point the Company's obligation to so issue and deliver such certificate or credit the Holder's balance account with the Depository for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder's balance account with the Depository for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the shares of Common Stock on any trading day during the period commencing on the date of the applicable Election to Purchase and ending on the date immediately preceding the date of such issuance and payment under this clause (ii). The term "Business Day" as used in this Agreement shall mean any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in the City of New York, State of New York. If the Company fails for any reason to deliver to the Holder the Common Stock subject to an Election to Purchase by the Share Delivery Deadline, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Common Stock subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Election to Purchase), \$10 per trading day (increasing to \$20 per trading day on the fifth trading day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Deadline until such shares of Common Stock are delivered or Holder rescinds such exercise. For the purposes of this provision "VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on the Nasdaq Capital Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Nasdaq Capital Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a trading day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is listed or quoted on the OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

## 5. Adjustments.

### 5.1 Stock Dividends.

5.1.1 Split-Ups. If after the date hereof, and subject to the provisions of Section 5.5 below, the number of outstanding shares of Common Stock is increased by a stock dividend payable in shares of Common Stock on Common Stock, or by a split-up of shares of Common Stock or other similar event, then, on the effective date of such stock dividend, split-up or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be increased in proportion to such increase in the outstanding shares of Common Stock and the Exercise Price shall be proportionally decreased such that the aggregate Exercise Price, after such adjustments, remains the same for each Warrant.

5.1.2 Extraordinary Dividends. If the Company, at any time while the Warrants are outstanding and unexpired, shall pay a dividend or make a distribution in cash, securities or other assets to the holders of the Common Stock as a class on account of such shares of Common Stock (or other shares of the Company's capital stock into which the Warrants are convertible), other than as described in subsection 5.1.1 (any such non-excluded event being referred to herein as an "Extraordinary Dividend"), then the Warrant Price shall be decreased, effective immediately after the effective date of such Extraordinary Dividend, by the amount of cash

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and/or the fair market value (as determined by the Board, in good faith) of any securities or other assets paid on each share of Common Stock (or other shares of the Company's capital stock into which the Warrants are convertible) in respect of such Extraordinary Dividend.

5.2 Aggregation of Shares. If after the date hereof, and subject to the provisions of Section 5.5, the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

5.3 Adjustments in Warrant Price. Whenever the number of shares of Common Stock purchasable upon the exercise of the Warrants is adjusted, the Warrant Price shall be adjusted (to the nearest cent) by multiplying such Warrant Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock purchasable upon the exercise of the Warrants immediately prior to such adjustment, and (y) the denominator of which shall be the number of shares of Common Stock so purchasable immediately thereafter.

5.4 Notices of Changes in Warrant. Upon every adjustment of the Exercise Price or the number of shares issuable upon exercise of a Warrant, the Company shall give written notice thereof to the Warrant Agent, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in Sections 5.1 or 5.2, then, in any such event, the Company shall give written notice to each registered holder, at the last address set forth for such holder in the warrant register, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

5.5 No Fractional Shares. Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares or scrip representing fractional shares upon the exercise of Warrants. If, by reason of any adjustment made pursuant to this Section 5, the holder of any Warrant would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise and at its sole election, either (i) pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Warrant Price, or (ii) round up to the nearest whole number the number of shares of Common Stock to be issued to such Holder.

5.6 Form of Warrant. The form of Warrant need not be changed because of any adjustment pursuant to this Section 5, and Warrants issued after such adjustment may state the same Warrant Price and the same number of shares as is stated in the Warrants initially issued pursuant to this Agreement; provided, however, that the Company may at any time in its sole discretion make any change in the form of Warrant that the Company may deem appropriate and that does not affect the substance thereof, and any Warrant thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant or otherwise, may be in the form as so changed.

## 6. Transfer and Exchange of Warrants.

6.1 Registration of Transfer. The Warrant Agent shall register the transfer, from time to time, of any outstanding Warrant upon the Warrant Register, upon surrender of such Warrant for transfer, properly endorsed with signatures properly guaranteed and accompanied by appropriate instructions for transfer. Upon any such transfer, a new Warrant representing an equal aggregate number of Warrants shall be issued and the old Warrant shall be cancelled by the Warrant Agent. The Warrants so cancelled shall be delivered by the Warrant Agent to the Company from time to time upon request.

6.2 Procedure for Surrender of Warrants. Warrants may be surrendered to the Warrant Agent, together with a written request for exchange or transfer reasonably acceptable to Warrant Agent, duly executed by the registered holder thereof, or by a duly authorized attorney, and thereupon the Warrant Agent shall issue in exchange therefor one or more new Warrants as requested by the registered holder of the Warrants so surrendered, representing an equal aggregate number of Warrants; provided, however, that except as otherwise provided herein or in any Book-Entry Warrant Certificate, each Book-Entry Warrant Certificate may be transferred only in whole and

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only to the Depository, to another nominee of the Depository, to a successor depository, or to a nominee of a successor depository; provided further, however, that in the event that a Warrant surrendered for transfer bears a restrictive legend, the Warrant Agent shall not cancel such Warrant and issue new Warrants in exchange therefor until the Warrant Agent has received an opinion of counsel for the Company stating that such transfer may be made and indicating whether the new Warrants must also bear a restrictive legend. Upon any such registration of transfer, the Company shall execute, and the Warrant Agent shall countersign and deliver, in the name of the designated transferee a new Warrant Certificate or Warrant Certificates of any authorized denomination evidencing in the aggregate a like number of unexercised Warrants.

6.3. Fractional Warrants. The Warrant Agent shall not be required to effect any registration of transfer or exchange which will result in the issuance of a Warrant Certificate for a fraction of a Warrant.

6.4. Service Charges. A service charge shall be made for any exchange or registration of transfer of Warrants, as negotiated between Company and Warrant Agent.

6.5. Warrant Execution and Countersignature. The Warrant Agent is hereby authorized to countersign and to deliver, in accordance with the terms of this Warrant Agreement, the Warrants required to be issued pursuant to the provisions of this Section 6, and the Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Warrants duly executed on behalf of the Company for such purpose.

7. Limitations on Exercise. Neither the Warrant Agent nor the Company shall effect any exercise of any Warrant, and a registered holder shall not have the right to exercise any portion of a Warrant, to the extent that after giving effect to the issuance of shares of Common Stock after exercise as set forth on the applicable Election to Purchase, the registered holder (together with such registered holder's Affiliates (as defined in Rule 405 under Act), and any other persons acting as a group together with the registered holder or any of the registered holder's Affiliates), would beneficially own in excess of 4.99% of the Company's Common Stock (the "Maximum Percentage"). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the registered holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of the Warrant with respect to which such determination is being made, but shall exclude (i) the number of shares of Common Stock which would be issuable upon exercise of the remaining, nonexercised portion of any Warrant beneficially owned by the registered holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by the Registered Holder or any of its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section 7, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the registered holder that neither the Warrant Agent nor the Company is representing to the registered holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the registered holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 7 applies, the determination of whether a Warrant is exercisable (in relation to other securities owned by the registered holder together with any Affiliates) and of which portion of a Warrant is exercisable shall be in the sole discretion of the registered holder, and the submission of an Election to Purchase shall be deemed to be the registered holder's determination of whether such Warrant is exercisable (in relation to other securities owned by the registered holder together with any Affiliates) and of which portion of a Warrant is exercisable, and neither the Warrant Agent nor the Company shall have any obligation to verify or confirm the accuracy of such determination and neither of them shall have any liability for any error made by the registered holder. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 7, in determining the number of outstanding shares of Common Stock, a registered holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Securities and Exchange Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. The provisions of this Section 7 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6 to correct this subsection (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of a Warrant.

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## 8. Other Provisions Relating to Rights of Holders of Warrants.

8.1. No Rights as Stockholder. Except as otherwise specifically provided herein, a registered holder, solely in its capacity as a holder of a Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant Agreement be construed to confer upon a registered holder, solely in its capacity as the registered holder of a Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the registered holder of the Warrant Shares which it is then entitled to receive upon the due exercise of a Warrant. A Warrant does not entitle the registered holder thereof to any of the rights of a stockholder.

8.2. Lost, Stolen, Mutilated, or Destroyed Warrants. If any Warrant is lost, stolen, mutilated, or destroyed, the Company and the Warrant Agent may on such terms as to indemnity (including obtaining an open penalty bond protecting the Warrant Agent) or otherwise as they may in their discretion impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination, tenor, and date as the Warrant so lost, stolen, mutilated, or destroyed. Any such new Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Warrant shall be at any time enforceable by anyone.

8.3. Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock that will be sufficient to permit the exercise in full of all outstanding Warrants issued pursuant to this Warrant Agreement.

8.4. Registration of Common Stock. The Company will use commercially reasonable efforts to maintain the effectiveness of the Registration Statement and the current status of the Prospectus or to file and maintain the effectiveness of another registration statement and another current prospectus covering the Warrants and the Warrant Shares until all Warrant Shares covered by such registration statement may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1).

## 9. Redemption.

9.1. Right of Redemption. Not less than all of the outstanding Warrants may be redeemed, at the option of the Company, at any time following the first anniversary of closing of the Offering and prior to the Expiration Date, at the office of the Warrant Agent, upon the notice referred to in Section 9.2, at the price of \$0.01 per Warrant (subject to adjustment proportionate to any adjustment to the Warrant Price pursuant to Section 5.3) (the "Redemption Price"), provided, however, that the last reported sales price of the Common Stock has been equal to or greater than the \$1.20 per share (subject to adjustment proportionate to any adjustment to the Warrant Price pursuant to Section 5.3) for any period of 10 consecutive trading days ending prior to the notice of redemption to the Registered Holders and there is an effective registration statement covering the shares of Common Stock issuable upon exercise of the Warrants current and available.

9.2. Date Fixed for, and Notice of, Redemption. In the event the Company shall elect to redeem all of the Warrants pursuant to Section 9.1 (the "Redeemable Warrants"), the Company shall fix a date for the redemption. Notice of redemption shall be mailed by first class mail, postage prepaid, by the Company not less than 30 days prior to the date fixed for redemption to the Registered Holders of the Redeemable Warrants at their last addresses as they shall appear on the registration books. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date sent whether or not the Registered Holder received such notice.

9.3. Exercise After Notice of Redemption. The Redeemable Warrants may be exercised for cash in accordance with Section 3.3.1 of this Warrant Agreement at any time after notice of redemption shall have been given by the Company pursuant to Section 9.2 hereof and prior to the time and date fixed for redemption. On and after the redemption date, the record holders of the Redeemable Warrants shall have no further rights except to receive the Redemption Price upon surrender of the Redeemable Warrants.

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10. Concerning the Warrant Agent and Other Matters.

10.1. Concerning the Warrant Agent. The Warrant Agent:

- i) shall have no duties or obligations other than those set forth herein and no duties or obligations shall be inferred or implied;
- ii) may rely on and shall be held harmless by the Company in acting upon any certificate, statement, instrument, opinion, notice, letter, facsimile or electronic transmission, telegram or other document, or any security delivered to it, and reasonably believed by it to be genuine and to have been made or signed by the proper party or parties;
- iii) may rely on and shall be held harmless by the Company in acting upon written or oral instructions or statements from the Company with respect to any matter relating to its acting as Warrant Agent;
- iv) may consult with counsel satisfactory to it (including counsel for the Company) and shall be held harmless by the Company in relying on the advice or opinion of such counsel in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion of such counsel;
- v) solely shall make the final determination as to whether or not a Warrant received by Warrant Agent is duly, completely and correctly executed, and Warrant Agent shall be held harmless by the Company in respect of any action taken, suffered or omitted by Warrant Agent hereunder in good faith and in accordance with its determination;
- vi) shall not be obligated to take any legal or other action hereunder which might, in its judgment subject or expose it to any expense or liability unless it shall have been furnished with an indemnity satisfactory to it; and
- vii) shall not be liable or responsible for any failure of the Company to comply with any of its obligations relating to the Registration Statement or this Warrant Agreement, including without limitation obligations under applicable regulation or law.

10.2 Payment of Taxes. The Company will from time to time promptly pay all taxes and charges that may be imposed upon the Company or the Warrant Agent in respect of the issuance or delivery of shares of Common Stock upon the exercise of Warrants, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrants or such shares. The Warrant Agent shall not register any transfer or issue or deliver any Warrant Certificate(s) or Warrant Shares unless or until the persons requesting the registration or issuance shall have paid to the Warrant Agent for the account of the Company the amount of such tax, if any, or shall have established to the reasonable satisfaction of the Company that such tax, if any, has been paid.

10.3 Resignation, Consolidation, or Merger of Warrant Agent.

10.3.1. Appointment of Successor Warrant Agent. The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving sixty (60) days' notice in writing to the Company. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor Warrant Agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the Warrant Agent or by the holder of the Warrant (who shall, with such notice, submit his Warrant for inspection by the Company), then the holder of any Warrant may apply to the Supreme Court of the State of New York for the County of New York for the appointment of a successor Warrant Agent at the Company's cost. Any successor Warrant Agent (but not including the initial Warrant Agent), whether appointed by the Company or by such court, shall be a corporation organized and existing under the laws of the State of Delaware, in good standing and having its principal office in the State of New York, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. After appointment, any successor Warrant Agent shall be vested with all the authority, powers, rights, immunities, duties, and obligations of its predecessor Warrant Agent with like effect as if originally named as Warrant Agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate,

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the predecessor Warrant Agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor Warrant Agent all the authority, powers, and rights of such predecessor Warrant Agent hereunder; and upon request of any successor Warrant Agent the Company shall make, execute, acknowledge, and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Warrant Agent all such authority, powers, rights, immunities, duties, and obligations.

10.2.2. Notice of Successor Warrant Agent. In the event a successor Warrant Agent shall be appointed, the Company shall give notice thereof to the predecessor Warrant Agent and the transfer agent for the Common Stock not later than the effective date of any such appointment.

10.2.3. Merger or Consolidation of Warrant Agent. Any corporation into which the Warrant Agent may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party shall be the successor Warrant Agent under this Warrant Agreement without any further act.

#### 10.4. Fees and Expenses of Warrant Agent.

10.4.1. Remuneration. The Company agrees to pay the Warrant Agent reasonable remuneration in an amount separately agreed to between Company and Warrant Agent for its services as Warrant Agent hereunder and will reimburse the Warrant Agent upon demand for all expenditures that the Warrant Agent may reasonably incur in the execution of its duties hereunder. One half of the total Warrant Agent fees (not including postage) must be paid upon execution of this Warrant Agreement. The remaining half must be paid within fifteen (15) business days thereafter. An invoice for any out-of-pocket and/or per item fees incurred will be rendered to and payable by the Company within fifteen (15) days of the date of said invoice. It is understood and agreed that all services to be performed by Warrant Agent shall cease if full payment for its services has not been received in accordance with the above schedule, and said services will not commence thereafter until all payment due has been received by Warrant Agent.

10.4.2. Further Assurances. The Company agrees to perform, execute, acknowledge, and deliver or cause to be performed, executed, acknowledged, and delivered all such further and other acts, instruments, and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

#### 10.5. Liability of Warrant Agent.

10.5.1. Reliance on Company Statement. Whenever in the performance of its duties under this Warrant Agreement, the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a statement signed by the President, Chief Executive Officer, Chief Financial Officer, Secretary or other principal officer of the Company and delivered to the Warrant Agent. The Warrant Agent may rely upon such statement for any action taken or suffered in good faith by it pursuant to the provisions of this Warrant Agreement.

10.5.2. Indemnity. The Warrant Agent shall be liable hereunder only for its own gross negligence, willful misconduct or bad faith. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all liabilities, including judgments, claims, losses, damages, costs and reasonable counsel fees, for anything done or omitted by the Warrant Agent in the execution of this Warrant Agreement except as a result of the Warrant Agent's gross negligence, willful misconduct, or bad faith.

10.5.3. Limitation of Liability. The Warrant Agent's aggregate liability, if any, during the term of this Warrant Agreement with respect to, arising from, or arising in connection with this Warrant Agreement, or from all services provided or omitted to be provided under this Warrant Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid or payable hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses.

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10.5.4 Disputes. In the event any question or dispute arises with respect to the proper interpretation of this Warrant Agreement or the Warrant Agent's duties hereunder or the rights of the Company or of any holder of a Warrant, the Warrant Agent shall not be required to act and shall not be held liable or responsible for refusing to act until the question or dispute has been judicially settled (and the Warrant Agent may, if it deems it advisable, but shall not be obligated to, file a suit in interpleader or for a declaratory judgment for such purpose) by final judgment rendered by a court of competent jurisdiction, binding on all parties interested in the matter which is no longer subject to review or appeal, or settled by a written document in form and substance satisfactory to the Warrant Agent and executed by the Company and each other interested party. In addition, the Warrant Agent may require for such purpose, but shall not be obligated to require, the execution of such written settlement by all the Warrant holders, as applicable, and all other parties that may have an interest in the settlement.

10.5.5 Exclusions. The Warrant Agent shall have no responsibility with respect to the validity of this Warrant Agreement or with respect to the validity or execution of any Warrant (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant; nor shall it be responsible to make any adjustments required under the provisions of Section 4 hereof or responsible for the manner, method, or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Warrant Agreement or any Warrant or as to whether any shares of Common Stock will when issued be valid and fully paid and nonassessable.

10.6. Acceptance of Agency. The Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth and among other things, shall account promptly to the Company with respect to Warrants exercised and concurrently account for, and pay to the Company, all moneys received by the Warrant Agent for the purchase of shares of Common Stock through the exercise of Warrants.

## 11. Miscellaneous Provisions.

11.1. Successors. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns.

11.2. Notices. Any notice, statement or demand authorized by this Warrant Agreement to be given or made by the Warrant Agent or by the holder of any Warrant to or on the Company shall be sufficiently given (i) when so delivered if by hand or overnight delivery, (ii) when sent, if delivered by facsimile (provided that confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) or by electronic mail, or (iii) if sent by certified mail or private courier service, within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Cytori Therapeutics, Inc.  
3020 Callan Road  
San Diego, CA 92121  
Attn: Marc H. Hedrick

With a copy to:

Latham & Watkins LLP  
  
12670 High Bluff Drive  
San Diego, CA 92130  
Attention: Cheston Larson, Esq.

Any notice, statement or demand authorized by this Warrant Agreement to be given or made by the holder of any Warrant or by the Company to or on the Warrant Agent shall be sufficiently given (a) upon receipt if by hand or overnight delivery, (b) when sent, if delivered by facsimile (provided that confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) or by electronic mail, or (c) if by

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hand or overnight delivery or if sent by certified mail or private courier service, within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

Broadridge Corporate Issuer Solutions, Inc.  
1717 Arch Street  
Suite 1300  
Philadelphia, Pennsylvania 19103  
Attn: Compliance Department

With a copy to:

Broadridge Financial Solutions, Inc.  
2 Journal Square Plaza  
Jersey City, New Jersey 07306  
Attention: General Counsel

11.3. Applicable Law. The validity, interpretation, and performance of this Warrant Agreement and of the Warrants shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Warrant Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenience forum. Any such process or summons to be served upon the Company may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to it at the address set forth in Section 11.2 hereof. Such mailing shall be deemed personal service and shall be legal and binding upon the Company in any action, proceeding or claim.

11.4. Persons Having Rights under this Warrant Agreement. Nothing in this Agreement shall be construed to confer upon, or give to, any person or entity other than the parties hereto and the Registered Holders of the Warrants any right, remedy, or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the Registered Holders of the Warrants.

11.5. Examination of the Warrant Agreement. A copy of this Warrant Agreement shall be available at all reasonable times at the office of the Warrant Agent in the city of Philadelphia, Commonwealth of Pennsylvania, for inspection by the registered holder of any Warrant. The Warrant Agent may require any such holder to submit his Warrant for inspection by it.

11.6. Counterparts. This Warrant Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. Such counterparts may be delivered electronically.

11.7. Effect of Headings. The Section headings herein are for convenience only and are not part of this Warrant Agreement and shall not affect the interpretation thereof.

11.8. Amendments. This Warrant Agreement may be amended by the parties hereto without the consent of any registered holder for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein or adding or changing any other provisions with respect to matters or questions arising under this Warrant Agreement as the parties may deem necessary or desirable and that the parties deem shall not adversely affect the interest of the registered holders. All other modifications or amendments, including any amendment to increase the Exercise Price or shorten the Exercise Period, shall require the written consent of the registered holders of a majority of the then outstanding Warrants.

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11.9 Severability. This Warrant Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Warrant Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Warrant Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

11.10 Force Majeure. In the event either party is unable to perform its obligations under the terms of this Warrant Agreement because of acts of God, strikes, failure of carrier or utilities, equipment or transmission failure or damage that is reasonably beyond its control, or any other cause that is reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes. Performance under this Warrant Agreement shall resume when the affected party or parties are able to perform substantially that party's duties.

11.11 Consequential Damages. Notwithstanding anything in this Warrant Agreement to the contrary, neither party to this Warrant Agreement shall be liable to the other party for any consequential, indirect, special or incidental damages under any provision of this Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

*[Signature Page Follows.]*

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IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

CYTORI THERAPEUTICS, INC.

By:  
Name: Tiago Girao  
Title: VP Finance and Chief Financial Officer

BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC.

By:  
Name:  
Title:

*Signature Page to Warrant Agency Agreement*

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**EXHIBIT A**

**[Form of Warrant Certificate]  
[REVERSE]**

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Number: S-\_\_\_\_\_

Series S Warrants to purchase \_\_\_\_\_ shares

**THIS WARRANT SHALL BE VOID IF NOT EXERCISED PRIOR TO  
THE EXPIRATION OF THE EXERCISE PERIOD PROVIDED FOR  
IN THE WARRANT AGREEMENT DESCRIBED BELOW**

**CYTORI THERAPEUTICS, INC.**

*Incorporated Under the Laws of the State of Delaware*

CUSIP [    ]

**Series S Warrant Certificate**

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants entitling the holder on exercise to receive shares of Common Stock and are issued or to be issued pursuant to a Warrant Agreement dated as of [\_\_\_\_\_], 2017 (the "**Warrant Agreement**"), duly executed and delivered by the Company to Broadridge Corporate Issuer Solutions, Inc., a corporation having its principal offices in Philadelphia, Pennsylvania, as warrant agent (the "**Warrant Agent**"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "**holders**" or "**holder**" meaning the Registered Holders or Registered Holder) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Warrants may be exercised at any time during the Exercise Period set forth in the Warrant Agreement. Notwithstanding the foregoing or anything else herein or in the Warrant Agreement to the contrary, for so long as the holder continues to hold the Warrant, such holder shall not enter into any short sale or similar transaction with respect to the Common Stock. The holder of Warrants evidenced by this Warrant Certificate may exercise them by delivering (i) this Warrant Certificate, or, in the case of a Book-Entry Warrant Certificate (as defined in the Warrant Agreement), the Warrants to be exercised (the "**Book-Entry Warrants**") as shown on the records of The Depository Trust Company (the "**Depository**") to an account of the Warrant Agent at the Depository designated for such purpose in writing by the Warrant Agent to the Depository, (ii) an election to purchase ("**Exercise Notice**"), properly executed by the holder hereof on the reverse of this Warrant Certificate or properly executed by the institution in whose account the Warrant is recorded on the records of the Depository (the "**Participant**"), and substantially in the form included on the reverse of this Warrant Certificate and (iii) the Warrant Price for each Warrant to be exercised in lawful money of the United States by certified or official bank check or by bank wire transfer in immediately available funds, in each case payable to the Warrant Agent, unless a "**cashless exercise**" is permitted under the Warrant Agreement.

In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or his, her or its assignee, a new Warrant Certificate evidencing the number of Warrants not exercised. If fewer than all the Warrants evidenced by a Book-Entry Warrant Certificate are exercised, a notation shall be made to the records maintained by the Depository, its nominee for each Book-Entry Warrant Certificate, or a Participant, as appropriate, evidencing the balance of the Warrants remaining after such exercise.

Notwithstanding anything else in this Warrant Certificate or the Warrant Agreement, no Warrant may be exercised unless at the time of exercise (i) a registration statement covering the shares of Common Stock to be issued upon exercise is effective under the Securities Act and (ii) a prospectus thereunder relating to the shares of Common Stock is current, except through "**cashless exercise**" as provided for in the Warrant Agreement.

The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock issuable upon exercise of the Warrants set forth on the face hereof may, subject to certain conditions, be

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adjusted. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a fractional interest in a share of Common Stock, the Company shall, upon exercise, either round up to the nearest whole number of shares of Common Stock to be issued to the holder of the Warrant or pay such holder cash for such fractional share in the Company's sole discretion.

Warrant Certificates, when surrendered at the office of the Warrant Agent designated for such purposes by the Registered Holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent, a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the Registered Holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a stockholder of the Company.

---

NOTICE OF EXERCISE

(To Be Executed Upon Exercise of Warrant)

CASH EXERCISE:

The undersigned hereby irrevocably elects to exercise the rights represented by this Warrant Certificate to receive \_\_\_\_\_ shares of Common Stock and herewith tenders payment for such shares to the order of Cytori Therapeutics, Inc. (the "**Company**") in the amount of \$\_\_\_\_ in accordance with the terms hereof. The undersigned requests that a certificate for such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such shares be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_. If said number of shares is less than all of the shares of Common Stock purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such Warrant Certificate be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_.

CASHLESS EXERCISE:

In the event that the Warrant may be exercised, to the extent allowed by the Warrant Agreement, through cashless exercise, (i) the number of shares that this Warrant is exercisable for would be determined in accordance with section 3.3.2 of the Warrant Agreement which allows for such cashless exercise and (ii) the holder hereof shall complete the following:

The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, through the cashless exercise provisions of the Warrant Agreement, to receive shares of Common Stock. If said number of shares is less than all of the shares of Common Stock purchasable hereunder (after giving effect to the cashless exercise), the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares be registered in the name of \_\_\_\_\_, whose address is \_\_\_\_\_, and that such Warrant Certificate be delivered to \_\_\_\_\_, whose address is \_\_\_\_\_.

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

(Signature)

(Address)

(Tax Identification Number)

**Signature must conform in all respects to the name of the holder as specified on the face of this Warrant Certificate. If Warrant Shares, or a Warrant Certificate evidencing unexercised Warrants, are to be issued in a name other than that of the registered holder hereof or are to be delivered to an address other than the address of such holder as shown on the books of the Warrant Agent, the above signature must be guaranteed by a an Eligible Guarantor Institution (as that term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended).**

Signature Guaranteed:

**THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO RULE 17Ad-15).**

ASSIGNMENT

**(FORM OF ASSIGNMENT TO BE EXECUTED IF WARRANT HOLDER  
DESIRES TO TRANSFER WARRANTS EVIDENCED HEREBY)**

FOR VALUE RECEIVED, \_\_\_\_\_ HEREBY SELL(S), ASSIGN(S) AND TRANSFER(S) UNTO

(Please insert social security or  
other identifying number of assignee)

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

the rights represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer said Warrant Certificate on the books of the Warrant Agent with full power of substitution in the premises.

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

(Signature)

(Address)

(Tax Identification Number)

**Signature must conform in all respects to the name of the holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by an Eligible Guarantor Institution (as that term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended).**

Signature Guaranteed:

**THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO RULE 17Ad-15).**

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**Exhibit B**

**AGENT AND FEE SCHEDULE**

**Exchange:**

**Project Management Fees for up to 100 record stockholders:**

- \$500.00 per month, Agent Fee

Covers all services listed in "AGENT SERVICES COVERED" as set forth in Exhibit B for all record date Stockholders.

Warrant Agent shall be entitled to reimbursement of all reasonable out-of-pocket expenses including but not limited to postage, stationery and supplies, which will be billed as incurred during the performance of Warrant Agent's duties hereunder, including without limitation:

- Out of pocket expenses <sup>1</sup>
- Overnight delivery / courier service / photocopy service
- Envelopes – outer and BRE (Business Reply Envelopes) <sup>1</sup>
- Brochures and enrollment materials
- Insurance and courier fees
- Printing of check forms and blank stock certificates

Although Warrant Agent may advance payment for these expenses and then invoice Company, there are occasions when Warrant Agent may require advance payment toward large expense items.

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<sup>1</sup> Rates are subject to change upon U.S. and foreign postage rate increases.

12670 High Bluff Drive  
 San Diego, California 92130  
 Tel: +1.858.523.5400 Fax: +1.858.523.5450  
[www.lw.com](http://www.lw.com)

# LATHAM & WATKINS LLP

October 2, 2017

Cytori Therapeutics, Inc.  
 3020 Callan Road  
 San Diego, California 92121

Re: Registration Statement on Form S-1

FIRM / AFFILIATE OFFICES

Barcelona	Moscow
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	Rome
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Ladies and Gentlemen:

We have acted as special counsel to Cytori Therapeutics, Inc., a Delaware corporation (the “**Company**”), in connection with the filing of a registration statement on Form S-1 under the Securities Act of 1933, as amended (the “**Act**”), with the Securities and Exchange Commission (the “**Commission**”) on August 14, 2017 (as amended, the “**Registration Statement**”). The Registration Statement relates to the registration of (i) 10,000 non-transferable subscription rights (the “**Rights**”) to be distributed by the Company without consideration in connection with a rights offering (the “**Rights Offering**”) to holders of record of common stock, par value \$0.001 per share, of the Company (the “**Common Stock**”), (ii) up to 10,000 units (the “**Units**”) issuable upon exercise of the Rights, each Unit entitling the holder thereof to purchase one share of Series B Preferred Stock, par value \$0.001 per share (the “**Preferred Stock**”), and 1,250 warrants to purchase one share of Common Stock (the “**Warrants**”), (iii) the Preferred Stock, (iv) the Warrants, (v) up to 25,000,000 shares of Common Stock issuable upon conversion of the Preferred Stock (the “**Conversion Shares**”); and (vi) up to 12,500,000 shares of Common Stock issuable upon exercise of the Warrants (the “**Warrant Shares**”). The Rights, Units, Preferred Stock, Warrants, Conversion Shares and Warrant Shares plus any additional Rights, Units, Preferred Stock, Warrants, Conversion Shares and Warrant Shares registered pursuant to any subsequent registration statement that the Company may hereafter file with the Commission pursuant to Rule 462(b) under the Act in connection with the offering by the Company contemplated by the Registration Statement are referred to herein collectively as the “**Securities**.” This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related Prospectus, other than as expressly stated herein with respect to the issue of the Securities.

LATHAM & WATKINS<sup>LLP</sup>

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof:

1. The Rights have been authorized by all necessary corporate action of the Company and when executed, authenticated, issued and delivered in the manner contemplated by the Registration Statement and by such corporate action, such Rights will be the legally valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

2. The Units have been authorized by all necessary corporate action of the Company and when duly executed, authenticated, issued and delivered against payment therefor in the manner contemplated by the Registration Statement and by such corporate action, such Units will be the legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

3. The Preferred Stock has been authorized by all necessary corporate action of the Company and, assuming the approval of the Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock (the "**Certificate of Designation**") and its filing with the Secretary of State of the State of Delaware, if issued and delivered against payment therefor in an amount not less than the par value thereof in the manner contemplated by the Certificate of Designation and by such corporate action, the Preferred Stock will be validly issued, fully paid and nonassessable.

4. The Warrants have been authorized by all necessary corporate action of the Company and when such Warrants have been duly executed, authenticated, issued and delivered against payment therefor in the manner contemplated by the Registration Statement and by such corporate action, such Warrants will be the legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

5. The Warrant Shares issuable upon exercise of the Warrants have been authorized by all necessary corporate action of the Company, and if issued upon exercise of the Warrants in accordance with the terms thereof (including obtaining the requisite approval of the Company's stockholders pursuant to the rules of The Nasdaq Stock Market), would be validly issued, fully paid and nonassessable.

6. The Conversion Shares have been authorized by all necessary corporate action of the Company and, assuming the approval of the Certificate of Designation and its filing with the Secretary of State of the State of Delaware, if issued and delivered in accordance with the terms of the Certificate of Designation (including obtaining the requisite approval of the Company's stockholders pursuant to the rules of The Nasdaq Stock Market), the Conversion Shares would be validly issued, fully paid and nonassessable.

---



**LATHAM & WATKINS** LLP

In rendering the foregoing opinions, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares in the General Corporation Law of the State of Delaware.

Our opinions are subject to: (i) the effect of bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights and remedies of creditors; and (ii) the effect of general principles of equity, whether considered in a proceeding in equity or at law (including the possible unavailability of specific performance or injunctive relief), concepts of materiality, reasonableness, good faith and fair dealing, and the discretion of the court before which a proceeding is brought. We express no opinion or confirmation as to federal or state securities laws, tax laws, antitrust or trade regulation laws, insolvency or fraudulent transfer laws, antifraud laws, compliance with fiduciary duty requirements, pension or employee benefit laws, FINRA rules or stock exchange rules (without limiting other laws excluded by customary practice).

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading "Legal Matters." We further consent to the incorporation by reference of this letter and consent into any registration statement filed pursuant to Rule 462(b) with respect to the Securities. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

## LATHAM &amp; WATKINS LLP

October 2, 2017

Cytori Therapeutics, Inc.  
3020 Callan Road  
San Diego, California 92121

Re: Cytori Therapeutics, Inc.

Ladies and Gentlemen:

355 Grand Avenue, Suite 100  
Los Angeles, California 90071-1560  
Tel: +1.213.485.1234 Fax: +1.213.891.8763  
www.lw.com

FIRM South / AFFILIATE OFFICES  
Barcelona Moscow  
Beijing Munich  
Boston New York  
Brussels Orange County  
Century City Paris  
Chicago Riyadh  
Dubai Rome  
Düsseldorf San Diego  
Frankfurt San Francisco  
Hamburg Seoul  
Hong Kong Shanghai  
Houston Silicon Valley  
London Singapore  
Los Angeles Tokyo  
Madrid Washington, D.C.  
Milan

We have acted as special tax counsel to Cytori Therapeutics, Inc., a Delaware corporation (the "**Company**"), in connection with the filing of a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "**Act**"), with the Securities and Exchange Commission (the "**Commission**") on August 14, 2017 (as amended, the "**Registration Statement**"). The Registration Statement relates to the registration of (i) 10,000 non-transferable subscription rights (the "**Rights**") to be distributed by the Company without consideration in connection with a rights offering (the "**Rights Offering**") to holders of record of common stock, par value \$0.001 per share, of the Company (the "**Common Stock**"), (ii) up to 10,000 units (the "**Units**") issuable upon exercise of the Rights, each Unit entitling the holder thereof to purchase one share of Series B Preferred Stock, par value \$0.001 per share (the "**Preferred Stock**"), and 1,250 warrants to purchase one share of Common Stock (the "**Warrants**"), (iii) the Preferred Stock, (iv) the Warrants, (v) up to 25,000,000 shares of Common Stock issuable upon conversion of the Preferred Stock (the "**Conversion Shares**"); and (vi) up to 12,500,000 shares of Common Stock issuable upon exercise of the Warrants (the "**Warrant Shares**"). The Rights, Units, Preferred Stock, Warrants, Conversion Shares and Warrant Shares plus any additional Rights, Units, Preferred Stock, Warrants, Conversion Shares and Warrant Shares registered pursuant to any subsequent registration statement that the Company may hereafter file with the Commission pursuant to Rule 462(b) under the Act in connection with the offering by the Company contemplated by the Registration Statement are referred to herein collectively as the "**Securities**."

The facts, as we understand them, and upon which with your permission we rely in rendering the opinion herein, are set forth in the Registration Statement and the Company's responses to our examination and inquiries.

In addition, in our capacity as special tax counsel to the Company, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction of such documents, corporate records and other instruments as we have deemed necessary or appropriate for purposes of this opinion. For the purposes of our opinion, we have not made an independent investigation or audit of the facts set forth in the above referenced documents. In addition, in rendering this opinion we have assumed the truth and accuracy of all representations and statements made to us which are qualified as to knowledge or belief, without regard to such qualification. In our examination, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures thereon, the legal capacity of natural persons executing such documents and the conformity to authentic original documents of all documents submitted to us as copies.

Based on such facts and subject to the qualifications and limitations set forth herein and in the Registration Statement, we hereby confirm that all statements of legal conclusions in the Registration Statement under the caption "Material U.S. Federal Income Tax Consequences" constitute the opinion of Latham & Watkins LLP as to the material U.S. federal income tax consequences of the matters described therein.

No opinion is expressed as to any matter not discussed herein.

We are opining herein as to the effect on the subject transaction only of the federal income tax laws of the United States, and we express no opinion with respect to the applicability thereto, or the effect thereon, of other federal laws, the laws of any state or any other jurisdiction or as to any other matters of municipal law or the laws of any local agencies within any state.

This opinion is rendered to you as of the date of this letter, and we undertake no obligation to update this opinion subsequent to the date hereof. This opinion is based on current provisions of the Internal Revenue Code of 1986, as amended, regulations promulgated thereunder and interpretations thereof by the Internal Revenue Service and the courts having jurisdiction over such matters. Our opinion is not binding upon the Internal Revenue Service or the courts, and there can be no assurance that the Internal Revenue Service will not assert a contrary position. Furthermore, no assurance can be given that future legislative, judicial or administrative changes, on either a prospective or retroactive basis, would not affect the conclusions stated in this opinion. Any variation or difference in the facts from those set forth in the Registration Statement or any other documents upon which we have relied as described above may affect the conclusions stated herein.

This opinion is furnished to you, and is for your use in connection with the transactions referenced in the first paragraph hereof. This opinion may not be relied upon by you or your stockholders for any other purpose, or furnished to, assigned to, quoted to, or relied upon by any other person, firm or other entity for any purpose without our prior written consent, except that this opinion may be relied upon by persons entitled to rely on it pursuant to applicable provisions of federal securities law, including recipients of the Securities in this offering.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the incorporation by reference of this opinion to the Registration Statement. In giving such consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

<b>AWARD/CONTRACT</b>	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) <span style="float:right;">▶</span>	RATING N/A	PAGE 1	OF PAGES 55
2. CONTRACT (Proc. Inst. Ident.) NO. <b>HHSO100201200008C</b>	3. EFFECTIVE DATE <b>See Block 20C.</b>	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. OS99307		
5. ISSUED BY <b>Office of Acquisitions Management, Contracts, and Grants (AMCG) 330 Independence Ave., S.W. Room G640 Washington, D.C. 20201</b>	6. ADMINISTERED BY (If other than Item 6) <b>See Block 5.</b>			

7. NAME AND ADDRESS OF CONTRACTOR (No. street, county, state and ZIP Code) <b>Cytori Therapeutics, Inc. 3020 Callan Road San Diego, CA 92121</b>	8. DELIVERY <b>See Schedule.</b>
9. DISCOUNT FOR PROMPT PAYMENT N/A.	
10. SUBMIT INVOICES ADDRESS SHOWN IN:	ITEM <b>See Section G.</b>

11. SHIP TO/MARK FOR See Block 5.	CODE N/A	12. PAYMENT WILL BE MADE BY See Block 5.	CODE N/A
--------------------------------------	-------------	---	-------------

13. AUTHORITY FOR USING OTHER FULL AND OPEN COMPETITION: N/A <input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 253(c)( )		14. ACCOUNTING AND APPROPRIATION DATA <b>Appropriation Year: 2012; Object Class: 25106; CAN# 1992002</b>			
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. UNIT PRICE	15D. AMOUNT	15E. UNIT PRICE	15F. AMOUNT
See Section B.					

**15G. TOTAL AMOUNT OF CONTRACT** ▶ **\$4,683,680.00**

16. TABLE OF CONTENTS							
(✓)	SEC.	DESCRIPTION	PAGE(S)	(✓)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	1	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	46
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICE/COST	3	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION / SPECS / WORK STATEMENT	9	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	55
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	10	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	11	<input type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	55
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	11	<input type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	24	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	29				

**CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE**

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
---	---

19A. NAME AND TITLE OF SIGNER (Type or print) <b>Mark Saad, Chief Financial Officer</b>	20A. NAME OF CONTRACTING OFFICER		
19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA	20C. DATE SIGNED
(Signature of person authorized to sign)		BY (Signature of Contracting Officer)	

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**PART I – THE SCHEDULE**

**SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS**

**ARTICLE B.1. BRIEF DESCRIPTION OF SUPPLIES OR SERVICES**

This purpose of this contract is develop a product that will combine the wound healing properties of the Celution ® System, which has been developed by the Contractor, with a cell-friendly dressing as a medical countermeasure for use in the context of combined injury and radiation exposure, and to obtain FDA licensure of the Celution ® System with indications for use that explicitly include thermal burn.

The Research and Development (R&D) effort will progress in specific stages that cover the base performance segment and nine (9) option segments as specified in this contract. The period of performance for the base period is 24 months. Work performed during the base segment and during the option segments is considered to constitute a non-severable discrete work segment that is necessary for the R&D effort.

**ARTICLE B.2. ESTIMATED COST AND FIXED FEE**

- a. The total estimated cost of *the base performance segment* is **\$4,356,912.00**.
- b. The total fixed fee for *the base performance segment* is **\$326,768.00**. 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 **\$4,683,680.00**.
- d. The total amount for the base segment shall not exceed \$4,683,680.00. The total amount obligated by the Government for the base segment of the contract shall not exceed \$4,683,680.00 and the Government will not be responsible for any Contractor incurred costs that exceed this amount unless a modification to the contract is signed by the Contracting Officer which expressly increases this amount.
- e. It is estimated that the amount currently allotted will cover performance of the contract through **27 September 2014 (2 years from start date)**.
- f. 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.

<u>CLIN</u>	<u>Estimated Period of Performance</u>	<u>Supplies/Services</u>	<u>Total Estimated Cost</u>	<u>Fixed Fee</u>	<u>Total Est. Cost Plus Fixed Fee</u>
0001	28 September 2012 through 27 September 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.	\$4,356,912.00	\$326,768.00	\$4,683,680.00

**ARTICLE B. 3. OPTION PRICES**

- a. Unless the government exercises its option pursuant to the option clause contained in ARTICLE I.2, the contract consists only of the Base Work segment specified in the Statement of Work as defined in SECTIONS C and F, for the price set forth in ARTICLE B.2 of the contract.
- b. Pursuant to FAR Clause 52.217-9 (Option to Extend the Term of the Contract), the Government may, by unilateral contract modification, require the Contractor to perform the Option Work Segments specified in the Statement of Work as defined in SECTIONS C and F of this contract. If the Government exercises the/these option(s), written notice must be given to the Contractor within 30 days after the Government has completed its analysis of the deliverables associated with the applicable GO/NO GO Decision gate; and the Government must give the Contractor a preliminary written notice of its intent to exercise the option at least 30 days before the contract expires. Specific information regarding the time frame for this notice is set forth in the OPTION CLAUSE Article in SECTION G of this contract. The estimated cost of the contract will be increased as set forth below:

<u>CLIN/ Option</u>	<u>Estimated Period of Performance</u>	<u>Supplies/Services</u>	<u>Total Estimated Cost</u>	<u>Fixed Fee</u>	<u>Total Estimated Cost Plus Fixed Fee</u>
0002/1	28 September 2013 through 27 September 2016	Research and development, regulatory, clinical, and other tasks required for completion of a Pilot Clinical Trial of the Celution System in thermal burn injury  Reports and Other Data Deliverables	\$30,364,647.00	\$2,277,350.00	\$32,641,997.00
0003/2	28 September 2015 through 27 September 2017	Clinical, regulatory, and other tasks required for completion of a Pivotal Clinical Trial leading to FDA licensure for use of the Celution System in thermal burn injury.  Reports and Other Data Deliverables	\$42,326,809.00	\$3,174,511.00	\$45,501,320.00
0004/3	28 September 2013 through 27 September 2017	Research and development, clinical, regulatory and other tasks required to develop and obtain FDA clearance for a wound dressing that has ease of use and other characteristics suitable for use in thermal burn injury following a mass casualty event.  Reports and Other Data Deliverables	\$21,786,346.00	\$1,633,976.00	\$23,420,322.00

#### ARTICLE B. 4. PROVISIONS APPLICABLE TO DIRECT COSTS

##### a. Items Unallowable Unless Otherwise Provided

Notwithstanding the clauses, unless authorized in writing by the Contracting Officer, the cost of the following items or activities shall be unallowable as direct costs:

- 1) Acquisition, by purchase or lease, of any interest in real property;
- 2) Special rearrangement or alteration of facilities;
- 3) Purchase or lease of any item of general purpose office furniture or office equipment regardless of dollar value;
- 4) Accountable Government Property (see the Contractor's Guide for Control for Government Property incorporated by ARTICLE G.10. of this contract);
- 5) Travel to attend general scientific meetings;
- 6) Unapproved foreign travel – Subject to the procedure specified under subparagraph b.2 below;
- 7) Patient care costs (see Attachment 6);
- 8) Printing Costs (as defined in the Government Printing and Binding Regulations);
- 9) Light Refreshment and Meal Expenditures - Requests to use contract funds to provide light refreshments and/or meals to either federal or nonfederal employees must be submitted to the Contracting Officer's Representative (COR), with a copy to the Contracting Officer, at least six (6) weeks in advance of the event and are subject to "HHS Policy on Promoting Efficient Spending: Use of Appropriate Funding for Conferences and Meeting, Food and Promotional Items and Printing and Publications." The request shall contain the following information: (a) name, date, and location of the event at which the light refreshments and/or meals will be provide; (b) a brief description of the purpose of the event; (c) a cost breakdown of the estimated light refreshments and/or meals costs; (d) the number of nonfederal and federal attendees receiving light refreshments and/or meals; and (e) if the event will be held at a government facility.
- 10) No overtime (premium) compensation is authorized under the subject contract. Billing of actual hours should be limited to total productive hours in a month (8 hours/day).

##### b. Travel Costs

- a. Total expenditures for travel (transportation, lodging, subsistence, and incidental expenses) incurred in direct performance of this contract during the base segment or any option segment(s) shall not exceed amount negotiated in the final proposed budget without the prior written approval of the Contracting Officer. Cost must be consistent with Federal Acquisition Regulations (FAR) 52.247-66 – Preference for U.S. Air Flag carriers.
- b. Subject to the annual dollar limitation specified under B.4.b.1.a. above, the Contactor shall invoice and be reimbursed for all travel costs in accordance with FAR 31.2 – Contracts with Commercial Organizations, Subsection 31.205-46, Travel Costs.



## ARTICLE B.5. ADVANCE UNDERSTANDINGS

### a. **Man-in-Plant**

With seven (7) days advance notice to the Contractor in writing from the Contracting Officer, the Government may place a man-in-plant in the Contractor's facility. The man-in-plant shall be subject to the Contractor's policies and procedures regarding security and facility access at all times while in the Contractor's facility.

### b. **Subcontracts and Consultants**

Prior written consent from the Contracting Officer in the form of Contracting Officer Authorization (COA) is required for any subcontract that:

- Is of the cost reimbursement type;
- Is Fixed-Price and exceeds \$150,000 or 5% of the total estimated cost of the contract;

Contracting Officer shall request appropriate supporting documentation in order to review and determine authorization, pursuant with FAR Clause 52.244-2, Subcontracts. After receiving written consent of the subcontract by the Contracting Officer, a copy of the signed, executed subcontract and consulting agreement shall be provided to the Contracting Officer.

Note: Consulting services are treated as subcontracts and subject to the 'consent to subcontract' provisions set forth in this Article.

### c. **Reference FAR 52.244-2 (e) Subcontracts.**

FAR 52.244-2 (e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (d) of this clause, including the following information:

- (i). A description of the supplies or services to be subcontracted.
- (ii). Identification of the type of subcontract to be used.
- (iii). Identification of the proposed subcontractor.
- (iv). The proposed subcontract price.
- (v). The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi). The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting standards when such data are required by other provisions of this contract.
- (vii). A negotiation memorandum reflecting-
  - (A). The principal elements of the subcontract price negotiations;
  - (B). The most significant considerations controlling establishment of initial or revised prices;
  - (C). The reason cost or pricing data were or were not required;
  - (D). The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
  - (E). The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F). The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G). A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

The Contractor shall obtain the Contracting Officer's written consent (COA) prior to placing any consultant awards.

**d. Consultants**

Consultant fees to be paid to the following individuals:

Name	Rate Per Hour	Est. Number of Hours	Total Cost Excluding Travel Not to Exceed
David Herndon M.D.	\$300	84	\$25,200
William McBride Ph.D., D.Sc.	\$300	72	\$21,600
Mayer Tenenhaus M.D.	\$300	84	\$25,200
Carl Schuman, M.D.	\$300	56	\$16,800
Ken Lowe	\$300	160	\$48,000

**e. Site Visits and Inspections**

At the discretion of the USG and independent of activities conducted by the Contractor, with 48 hours notice to the contractor, the USG reserves the right to conduct site visits and inspections on an as needed basis, including collection of product samples and intermediates held by the contractor, or subcontractor. In case of subcontractor visits and inspections that are independent of activities conducted by the Contractor, the USG shall demonstrate cause for such visit and/or inspection. All costs reasonably incurred by the Contractor and subcontractor for such visit and/or inspection shall be allowed costs. The Contractor shall coordinate these visits and shall have the opportunity to accompany the USG on any such visits. Under time-sensitive or critical situations, the USG reserves the right to suspend the 48 hour notice to the Contractor. The areas included under the site visit could include, but are not limited to: security, regulatory and quality systems, and cGMP/GLP/GCP compliance.

If BARDA, the Contractor, or other parties identifies any issues during an audit, the Contractor shall capture the issues, identify potential solutions, and provide a report to BARDA for review and acceptance.

- If issues are identified during the audit, Contractor shall submit a report to BARDA detailing the finding and corrective action(s) within 10 business days of the audit.
- COR and CO will review the report and provide a response to the Contractor with 10 business days.
- Once corrective action is completed, the Contractor will provide a final report to BARDA.

**QA AUDIT:**

BARDA reserves the right to participate in QA audits. Upon completion of the audit/site visit the Contractor shall provide a report capturing the findings, results and next steps in proceeding with the subcontractor. If action is requested of the subcontractor, detailed

concerns for addressing areas of non-conformance to FDA regulations for GLP, GMP, or GCP guidelines, as identified in the audit report, must be provided to BARDA for review and acceptance. The Contractor shall provide responses from the subcontractors to address these concerns and plans for corrective action execution.

- Contractor shall notify CO and COR of upcoming, ongoing, or recent audits/site visits of subcontractors as part of weekly communications
- Contractor shall notify the COR and CO within 5 business days of report completion.

**f. Invoices - Cost and Personnel Reporting and Variances from the Negotiated Budget**

The Contractor agrees to provide a detailed breakdown on invoices of the following cost categories:

- a. Direct Labor - List individuals by name, title/position, hourly/annual rate, level of effort (actual hours or % of effort), breakdown by task performed by personnel, and amount claimed.
- b. Fringe Benefits - Cite rate and amount
- c. Overhead - Cite rate and amount
- d. Materials & Supplies - Include detailed breakdown when total amount is greater than \$1,000.
- e. Travel - Identify travelers, dates, destination, purpose of trip, and amount. Cite COA, if appropriate. List separately domestic travel, general scientific meeting travel, and foreign travel.
- f. Consultant Fees - Identify individuals and amounts.
- g. Subcontracts - Attach Subcontractor invoice(s). Cite applicable COA or notification.
- h. Equipment - Cite authorization and amount.
- i. Other Direct Costs - Include detailed breakdown when total amount is greater than \$1,000.
- j. G&A - Cite rate and amount.
- k. Total Cost
- l. Fixed Fee
- m. Total CPFF

Monthly invoices must include the cumulative total expenses to date, adjusted (as applicable) to show any amounts suspended by the Government. In order to verify allowability, further breakdown of costs may be requested at the Government's discretion.

**g. Confidential Treatment of Sensitive Information**

The Contractor shall guarantee strict confidentiality of any information/data of a sensitive nature that is provided to the Contractor by the Government during the performance of the contract. The Government has determined that the information/data that the Contractor will be provided during the performance of the contract is of a sensitive nature.

Disclosure of information/data that is sensitive in nature, in whole or in part, by the Contractor can only be made after the Contractor receives prior written approval from the Contracting Officer. Whenever the Contractor is uncertain with regard to the proper handling of information/data under the contract, the Contractor shall obtain a written determination from the Contracting Officer. (See also HHSAR clause 352.224-70).

Notwithstanding the foregoing, such information/data shall not be deemed of a sensitive nature with respect to the Contractor for purposes of this contract if such information/data: (a) was already known to the Contractor; (b) was generally available or known, or was otherwise part of the public domain, at the time of its disclosure to the Contractor; (c) became generally available or known, or otherwise became part of the public domain, after its disclosure to, or, with respect to the information/data by, the Contractor through no fault of the Contractor; (d) was disclosed to the Contractor, other than under an obligation of confidentiality or non-use, by a third party who had no obligation to the Government that controls such information/data not to disclose such information/data to others; or (e) was independently discovered or developed by the Contractor, as evidenced by its written records, without the use of information/data belonging to the Government.

Contractor may disclose information/data of a sensitive nature provided by the Government to the extent that such disclosure is: (a) made in response to a valid order of a court of competent jurisdiction or other supra-national, federal, national, regional, state, provincial or local governmental or regulatory body of competent jurisdiction; provided, however, that the Contractor shall first have given notice to the Government and give the Government a reasonable opportunity to quash such order and to obtain a protective order requiring that the information/data of a sensitive nature that is the subject of such order be held in confidence by such court or agency or, if disclosed, be used only for the purposes for which the order was issued; and provided further that if a disclosure order is not quashed or a protective order is not obtained, the information/data disclosed in response to such court or governmental order shall be limited to that information which is legally required to be disclosed in response to such court or governmental order; (b) otherwise required by law, in the opinion of legal counsel to the Contractor as expressed in an opinion letter in form and substance reasonably satisfactory to the Government, which shall be provided to the Government at least two (2) business days prior to the Contractor's disclosure of the information/data; or (c) made by the Contractor to the Regulatory Authorities as required in connection with any filing, application or request for Regulatory Approval; provided, however, that reasonable measures shall be taken to assure confidential treatment of such information/data.

**h. Sharing of contract deliverables within United States Government (USG)**

In an effort to build a robust medical countermeasure pipeline through increased collaboration, BARDA may share technical deliverables with USG entities responsible for Medical Countermeasure Development. In accordance with recommendations from the Public Health Emergency Medical Countermeasure Enterprise Review, agreements established in the Integrated Portfolio's Portfolio Advisory Committee (PAC) Charter, Technology Transfer Agreements (TTA) between BARDA and the Defense Threat Reduction Agency and the National Institute of Allergies and Infectious Diseases (NIAID), BARDA may share technical deliverables set forth in Article F.2 with colleagues within the Integrated Portfolio. This advance understanding does not authorize BARDA to share financial information outside HHS. The Contractor is advised to review the terms of FAR Clause 52.227-14 regarding the Government's rights to deliverables submitted during performance as well as the Government's rights to data contained within those deliverables.

**SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**ARTICLE C.1. STATEMENT OF WORK**

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 **28 September 2012** as set forth in SECTION J-List of Attachments, attached hereto and made a part of the contract.

## **ARTICLE C.2. REPORTING REQUIREMENTS**

Refer to ARTICLE F.2. for specific instructions regarding Reporting Requirements.

## **ARTICLE C.3. PROJECT MEETING CONFERENCE CALLS**

A teleconference call between the Contracting Officer's Technical Representative and the Contractor's Program Manager shall occur bi-weekly (every two weeks), or at the discretion of the U.S. Government. During this call, the Program Manager will discuss the activities during the reporting period, any problems that have arisen, and the activities planned for the ensuing reporting period. The Contractor's Program Manager may choose to include other key personnel on the conference call to give detailed updates on specific projects or this may be requested by the Contracting Officer's Representative.

Contractor will be responsible for preparing an agenda for the conference call and providing to BARDA no later than 2 business days prior to the scheduled conference call.

## **ARTICLE C.4. PROJECT MEETINGS**

The Contractor shall participate in Project Meetings to coordinate the performance of the contract, as requested by the Contracting Officer's Representative. These meetings may include face-to-face meetings with BARDA/AMCG in Washington, D.C. and at work sites of the Contractor and its subcontractors. Such meetings may include, but are not limited to, meetings of the Contractor (and subcontractors invited by the Contractor) to discuss study designs, site visits to the Contractor's and subcontractor's facilities, and meetings with the Contractor and HHS officials to discuss the technical, regulatory, and ethical aspects of the program. The Contractor must provide data, reports, and presentations to groups of outside experts (subject to appropriate protections for Contractor confidential or proprietary data) and USG personnel as required by the Contracting Officer's Representative in order to facilitate review of contract activities.

## **ARTICLE C.5 SUBJECT INVENTION REPORTING REQUIREMENT**

All reports and documentation required by FAR Clause 52.227-11, including, but not limited to: the invention disclosure report, the confirmatory license, and the Government support certification, shall be directed to the Contracting Officer. The final invention statement (see FAR 27.303(b)(2)(ii)) shall be submitted to the Contracting Officer on the expiration date of the contract. See also FAR clause 52.227-11 (Patent Rights-Ownership by the Contractor).

Reports and documentation submitted to the Contracting Officer shall be sent to the Contracting Officer to the address set forth in SECTION G – CONTRACT ADMINISTRATION DATA.

If no invention is disclosed or no activity has occurred on a previously disclosed invention during the applicable reporting period, a negative report shall be submitted to the Contracting Officer at the address listed above.

## **SECTION D – PACKAGING, MARKING, AND SHIPPING**

All deliverables required under this contract shall be packaged, marked and shipped in accordance with Government specifications. At a minimum, all deliverables shall be marked with the contract number and Contractor name. The Contractor shall guarantee that all required materials shall be delivered in immediate usable and acceptable condition.

Unless otherwise specified by the Contracting Officer, delivery of reports to be furnished to the Government under this contract (including invoices), shall be delivered to BARDA electronically along with a concurrent email notification to the Contracting Officer, Contract Specialist, and COR summarizing the electronic delivery.

Delivery of physical reports to be furnished shall be addressed to the COR, CO, and CS (as defined in SECTION G – CONTRACT ADMINISTRATION DATA).

## **SECTION E – INSPECTION AND ACCEPTANCE**

The Contracting Officer (CO) or the duly authorized representative will perform inspection and acceptance of materials and services to be provided under this contract.

For the purpose of this SECTION, the designated Contracting Officer's Representative (COR) is the authorized representative of the Contracting Officer. The COR will assist in resolving technical issues that arise during performance. The COR however is not authorized to change any contract terms or authorize any changes in the Statement of Work or modify or extend the period of performance, or authorize reimbursement of any costs incurred during performance. Inspection and acceptance will be performed at:

Biomedical Advanced Research and Development Authority/Office of Acquisition  
Management, Contracts, and Grants (AMCG)  
Office of the Assistant Secretary for Preparedness and Response  
U.S. Department of Health and Human Services  
330 Independence Avenue, S.W., Room G644  
Washington, D.C. 20201

## **SECTION F – DELIVERIES OR PERFORMANCE**

### **ARTICLE F.1. ESTIMATED PERIOD OF PERFORMANCE**

Under CLIN 0001, the estimated period of performance for the base performance segment of this contract shall be consistent with the dates set forth in ARTICLE B.2. If the Government exercises its option(s) pursuant to the Option Clauses in Article G.11 and Article I.2 of the contract, the period of performance will be increased as shown in the table in Article B.3.

### **ARTICLE F.2. DELIVERABLES**

Successful performance of the final contract shall be deemed to occur upon performance of the work set forth in the Statement of Work dated **28 September 2012** 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 23 October 2011 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:

## CYTORI DELIVERABLES SCHEDULE

General Deliverables	
Deliverable	Due Date(s)
BARDA Audit Reports	<p>If issues are identified during the audit, Contractor shall submit a report to BARDA detailing the finding and corrective action(s) within 10 business days of the audit</p> <p>COR and CO will review the report and provide a response to the Contractor with 10 business days</p> <p>Once corrective action is completed, the Contractor will provide a final report to BARDA</p>
QA Audit	<p>Notify CO and COR of upcoming, ongoing, or recent audits/site visits of subcontractors as part of weekly communications</p> <p>Notify the COR and CO within 5 business days of report completion</p>
Bi-weekly conference call agenda	No later than 2 business days prior to the scheduled conference call
Meeting/Teleconference Minutes	No later than 2 business days following the meeting/teleconference
Data/Data Analysis	Within 10 business days of request by COR or CO
Monthly Progress Report	On the 15 <sup>th</sup> calendar day following the month being reported upon
Annual Progress Report	On or before the 15 <sup>th</sup> calendar day of the month following each 12 months of the performance period
Draft Final Technical Report	60 calendar days prior to the end of the contract and all options. BARDA shall provide comments within 30 calendar days
Final Technical Report	On or before the end date of the contract and all options
Draft and Final Reports for Non-Clinical Studies and Clinical Studies	Draft report to BARDA at least 30 business days following the end of the

	<p>study</p> <p>BARDA will provide feedback to Contractor within 15 business days of receipt</p> <p>Final report, incorporating or addressing BARDA feedback, to BARDA within 15 business days of receipt of feedback</p>
Final Invention Report	On or before the end date of the contract and all options
<b>FDA Related Deliverables</b>	
FDA Meeting Notices	Notification to BARDA within 24 hours of scheduling Type A, B or C meetings OR within 24 hours of meeting occurrence for ad hoc meetings
FDA Meeting Minutes	Initial Contractor and FDA-issued draft minutes and final minutes of any meeting with the FDA within 3 business days of receipt
FDA Submissions	<p>Draft FDA submissions to BARDA at least 15 business days prior to FDA submission.</p> <p>BARDA will provide feedback to Contractor within 10 business days of receipt.</p> <p>Final FDA submissions shall be submitted to BARDA concurrently or no later than 1 calendar day of it submission to CDER.</p>
FDA Audits	<p>Notify CO and COR within 10 business days of a scheduled FDA audit or within 24 hours of an ad hoc site visit/audit if the FDA does not provide advanced notice.</p> <p>Contractor shall provide copies of any FDA audit report received from subcontractors that occur as a result of this contract or for this product within 3 business days of receiving correspondence from the FDA or third party.</p>



	<p>Within 10 business days of audit report, Contractor shall provide CO with a plan for addressing areas of nonconformance, if any are identified.</p>
Manufacturing Campaign Reports	<p>Submit at least 15 business days prior to FDA submission.</p> <p>Final FDA submission shall be submitted to BARDA concurrently or no later than 1 business day after submission to the FDA.</p>
Other FDA Correspondence	<p>Within 3 business days of correspondence</p>
Copies of FDA Correspondence and Meeting Summaries	<p>For any formal meeting with the FDA, the contractor shall forward initial draft minutes and subsequently final meeting minutes appropriately formatted within thirty (30) calendar days of the FDA meeting to the BARDA COR.</p> <p>The contractor shall forward the final draft minutes of any informal meeting with the FDA to BARDA. The contractor shall forward the dates and times of any meeting with the FDA to BARDA at least 30 days prior to the meeting.</p> <p>Contractor shall provide BARDA with five (5) business days in which to review and provide comments upon any document back to the contractor.</p>
Incident Report (As needed)	<p>Contractor shall communicate and document all critical programmatic concerns, risks, or potential risks with BARDA.</p> <p>Due within 48 hours of activity or incident or within 24 hours for a security activity or incident. Email or telephone with written follow-up to COR and CO. Additional updates due to COR and CO within 48 hours of additional developments.</p> <p>Contractor shall submit within 5 business days a Corrective Action Plan (if deemed necessary by either party) to address any potential issues.</p> <p>If corrective action is deemed necessary, Contractor must address in writing, its consideration of concerns raised by BARDA within 5 business days.</p>

<b>Base Period</b>		<b>9/28/12 to 9/27/14</b>		
<b>Name</b>	<b>WBS Number</b>	<b>Start Date</b>	<b>Finish/Due Date</b>	<b>Deliverable</b>
Technical and Project Management	1.1.1.4	9/28/2012	10/22/2012	Updated Task/Deliverables List
Hiring: Base Period	1.1.1.5	10/2/2012	1/22/2013	Include in the applicable monthly report
Subcontractor Management	1.1.2	10/16/2012	1/7/2013	Subcontractor Management Plan
Risk Management	1.1.3.3	10/16/2012	3/11/2013	Risk Management Plan
EVMS: Implementation Plan	1.1.4.2	10/15/2012	3/24/2013	EVMS Systems Plan
EVMS: Implementation	1.1.4.4	3/24/2013	7/24/2013	EVMS Systems Report
Preclinical Studies: Multiple Final Reports	1.3.1.3.16	10/2/2012	5/5/2014	Final report submitted to and accepted by BARDA CO/COR
Human Preclinical Studies Report	1.3.2.1	9/28/2012	2/24/2014	Final report submitted to and accepted by BARDA CO/COR
Pilot Clinical Trial Clinical Protocol Draft Development Plan	1.4.1.3	9/5/2013	10/18/2013	Draft or Outline Clinical Protocol submitted to BARDA CO/COR approval
Pilot Study Pre-IDE Meeting	1.5.1.2	12/9/2013	12/9/2013	Meeting minutes
CT-X2 Prototype Porcine Optimization	1.6.1	10/30/2012	8/19/2013	Final report submitted to and accepted by BARDA CO/COR
CT-X2 Validation	1.6.2	11/27/2012	8/5/2013	Final report submitted to and accepted by BARDA CO/COR

<b>Option 1: Pilot Clinical Study</b>		<b>9/28/2013 to 9/27/16</b>		
<b>Name</b>		<b>Start Date</b>	<b>Finish Date</b>	<b>Deliverable</b>
Clinical Hiring	1.1.1.6.1	3/19/2014	7/8/2014	Include in the applicable bi-monthly report
Development Hiring	1.1.1.6.2	3/19/2014	5/20/2014	Include in the applicable bi-monthly report
ADRCS and Standard of Care Feasibility Final Report	1.3.1.4.1	3/19/2014	1/21/2015	Final report submitted to and accepted by BARDA CO/COR
Cell fate analysis Final Report	1.3.1.4.2	3/19/2014	10/22/2014	Final report submitted to and accepted by BARDA CO/COR
Extended duration studies (Porcine) Final Report	1.3.1.4.3	5/1/2014	7/29/2015	Final report submitted to and accepted by BARDA CO/COR
Residual Celase analysis Final Report	1.3.2.3.1	3/19/2014	9/18/2014	Final report submitted to and accepted by BARDA CO/COR
Skin Substitute Cell Interactions Final Report	1.3.2.3.2	3/19/2014	9/8/2014	Final report submitted to and accepted by BARDA CO/COR
Burn ADRC Characterization-Eschar Final Report	1.3.2.4	3/19/2014	7/14/2014	Final report submitted to and accepted by BARDA CO/COR
Burn ADRC Characterization-Non-Eschar Final Report	1.3.2.5	4/4/2014	11/19/2014	Final report submitted to and accepted by BARDA CO/COR
Pilot Trial Execution Final Report	1.4.1.4	3/19/2014	12/11/2015	Final report submitted to and accepted by BARDA CO/COR
Pivotal Study Protocol Development Submission	1.4.2.1	3/23/2015	4/10/2015	Protocol submitted to and accepted by BARDA CO/COR
IDE Pilot Approval Final Report	1.5.1.6	10/27/2014	10/27/2014	IDE Approval
CT-X2 Hardware Software Report	1.6.3.1	3/9/2014	4/22/2014	Interim Report
CT-X2 Consumable Reagent Report	1.6.3.2	3/9/2014	8/5/2014	Interim Report
CT-X2 Human Use Review - Final Report	1.6.3.3	8/6/2014	9/17/2014	Final report submitted to and accepted by BARDA CO/COR

<b>Option 2: Pivotal Clinical Trial</b>		<b>9/28/14 to 9/27/17</b>		
<b>Name</b>		<b>Start Date</b>	<b>Finish Date</b>	<b>Deliverable</b>
Clinical Hiring	1.1.1.7	6/2/2015	8/10/2015	Include in the applicable bi-monthly report
Initiation of Enrollment Interim Report	1.4.2.4	2/12/2016	2/12/2016	First study patient enrolled
Study Complete Final Report	1.4.2.10	6/1/2017	6/1/2017	Final report submitted to and accepted by BARDA CO/COR
PMA Submission Final Report	1.5.3.2	6/1/2017	6/1/2017	PMA Submitted
FDA Licensure	1.5.3.3	9/21/2017	9/21/2017	PMA Approved
<b>Option 3: Comb. Inj. Treatment Optimization</b>		<b>9/28/13 to 9/27/17</b>		
<b>Name</b>		<b>Start Date</b>	<b>Finish Date</b>	<b>Deliverable</b>
Clinical Hiring	1.1.1.8	6/3/2016	7/14/2016	Include in the applicable bi-monthly report
Research and Development Hiring	1.1.1.9	3/19/2014	5/27/2014	Include in the applicable bi-monthly report
Porcine Studies Final Report	1.3.1.5	3/19/2014	1/25/2017	Final report submitted to and accepted by BARDA CO/COR
Human Studies Final Report	1.3.2.2	3/9/2014	8/19/2014	Final report submitted to and accepted by BARDA CO/COR
510k Clinical Study Completion Final Report	1.4.3	1/13/2016	5/10/2017	Final report submitted to and accepted by BARDA CO/COR
510k Clearance	1.5.4	4/27/2017	8/30/2017	510k Clearance by FDA
Dressing CMC Final Report	1.6.4	9/16/2015	5/22/2017	Final report submitted to and accepted by BARDA CO/COR

## **2. Detailed Description of Select Contract Deliverables**

### **Technical Reports**

In addition to those reports required by the other terms of this contract, the Contractor shall prepare and submit the following reports in the manner stated below and in accordance with the DELIVERIES Article in SECTION F of this contract and in SECTION J-List of Attachments, attached hereto and made a part of the contract.

#### **A. Monthly Progress Report**

This report shall include a description of the activities during the reporting period, and the activities planned for the ensuing reporting period. The first reporting period consists of the first full month of performance plus any fractional part of the initial month. Thereafter, the reporting period shall consist of each calendar month.

The format should include:

A cover page that includes the contract number and title; the type of report and period that it covers; the Contractor's name, address, telephone number, fax number, and e-mail address; and the date of submission; The progress report shall conform to the requirements set forth in the DELIVERIES Article in SECTION F of this contract.

- SECTION I – EXECUTIVE SUMMARY
- SECTION II - PROGRESS
- SECTION II Part A: OVERALL PROGRESS - A description of overall progress.
- SECTION II Part B: MANAGEMENT AND ADMINISTRATIVE UPDATE - A description of all meetings, conference calls, etc. that have taken place during the reporting period. Include progress on administration and management issues (e.g., evaluating, and managing subcontractor performance, and personnel changes).

#### Estimated and Actual Expenses

This report shall also contain a narrative or table detailing whether there is a significant discrepancy (>10%) at this time between the % of work completed and the cumulative costs incurred to date. Monthly and actual expenses should be broken down to the appropriate WBS level as far as possible. This section of the report should also contain estimates for the Subcontractors' expenses from the previous month if the Subcontractor did not submit a bill in the previous month. If the subcontractor(s) was not working or did not incur any costs in the previous month, then a statement to this effect should be included in this report for those respective subcontractors.

- SECTION II Part C: TECHNICAL PROGRESS - For each activity related to the Integrated Master Schedule, document the results of work completed and cost incurred during the period covered in relation to proposed progress, effort and budget. The report shall be in sufficient detail to explain comprehensively the results achieved. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved and preliminary conclusions resulting from analysis and scientific evaluation of data accumulated to date under the contract. The report shall include a description of problems encountered and proposed corrective action; differences between planned and actual progress, why the differences have occurred and what corrective actions are planned; preliminary conclusions resulting from analysis and scientific evaluation of data accumulated to date under the project.

- SECTION II Part D: PROPOSED WORK - A summary of work proposed related to the Integrated Master Schedule for the next reporting period and preprints/reprints of papers and abstracts.

In accordance with FAR 52.215-2, Audit and Records-Negotiation, BARDA may request on an ad hoc basis that the Contractor provide raw data. BARDA may request additional data at a reporting level or at lower levels, as BARDA deems necessary.

A monthly Progress Report will not be required in the same month that the Annual Technical Progress Report is submitted.

#### **B. Annual Progress Report**

This report shall include a summation of the results of the entire contract work for the period covered. An Annual Technical Progress Report will not be required for the period when the Final Technical Progress Report is due. Monthly Progress Reports shall not be submitted in the same month when an Annual Progress Report is due.

The first Annual Progress Report shall be submitted in accordance with the date set forth in ARTICLE F.2 of this contract. Each Annual Progress Report shall include:

A Cover page that includes the contract number and title; the type of report and period that it covers; the Contractor's name, address, telephone number, fax number, and email address; and the date of submission; The progress report shall conform to the requirements set forth in the DELIVERIES Article in SECTION F of this contract.

- SECTION I: EXECUTIVE SUMMARY - A brief overview of the work completed, and the major accomplishments achieved during the reporting period.
- SECTION II: PROGRESS
- SECTION II Part A: OVERALL PROGRESS - A description of overall progress.
- SECTION II Part B: MANAGEMENT AND ADMINISTRATIVE UPDATE – A description of all meetings, conference calls, etc. that have taken place during the reporting period. Include progress on administration and management issues (e.g. evaluating, and managing subcontractor performance; regulatory compliance audits, and personnel changes).
- SECTION II Part C: TECHNICAL PROGRESS - A detailed description of the work performed structured to follow the activities and decision gates described in the Integrated Master Schedule. The Report should include a description of any problems (technical or financial) that occurred or were identified during the reporting period, and how these problems were resolved.
- SECTION II Part D: PROPOSED WORK - A summary of work proposed for the next year period to include an updated Integrated Master Schedule.
- SECTION III Part A: In accordance with FAR 52.215-2, Audit and Records- Negotiation, BARDA may request on an ad hoc basis that the Contractor provide raw data. BARDA may request additional data at a reporting level or at lower levels, as BARDA deems necessary.

Contractor also should include the following in the Annual Progress Report:

1. Copies of manuscripts (published and unpublished), abstracts, and any protocols or methods developed specifically under the contract during the reporting period; and
2. A summary of any Subject Inventions per the requirements under FAR Clause 52.227-11.

An annual Progress Report will not be required in the same month that the Final Technical Progress Report is submitted.

### **C. Draft Final Technical Progress Report and Final Technical Progress Report**

These reports are to include a summation of the work performed and results obtained for the entire contract period of performance. This report shall be in sufficient detail to describe comprehensively the results achieved. The Draft Final Report and Final Report shall be submitted in accordance with the DELIVERIES Article in SECTION F of the contract. An Annual Technical Progress Report will not be required for the period when the Final Technical Progress Report is due. The Draft Final Technical Progress Report and the Final Technical Progress Report shall be submitted in accordance with the dates set forth in ARTICLE F.2. of this contract. The report shall conform to the following format:

1. Cover page to include the contract number, contract title, performance period covered, Contractor's name and address, telephone number, fax number, email address and submission date.
1. SECTION I: EXECUTIVE SUMMARY - Summarize the purpose and scope of the contract effort including a summary of the major accomplishments relative to the specific activities set forth in the Statement of Work.
2. SECTION II: RESULTS - A detailed description of the work performed related to the Integrated Master Schedule, the results obtained, and the impact of the results on the scientific and/or public health community including a listing of all manuscripts (published and in preparation) and abstracts presented during the entire period of performance and a summary of all inventions.

Draft Technical Progress Report: The Contractor is required to submit the Draft Final Technical Progress Report to the Contracting Officer's Representative and Contracting Officer. The Contracting Officer's Representative and Contracting Officer will review the Draft Final Technical Progress Report and provide the Contractor with comments in accordance with the dates set forth in ARTICLE F.2. of this contract.

Final Technical Progress Report: The Contractor will deliver the final version of the Final Technical Progress Report on or before the completion date of the contract. The final version shall include or address the Contracting Officer's Representative comments and Contracting Officer comments on the draft report. Final Technical Progress Report shall be submitted on or before the completion date of the contract.

### **D. Summary of Salient Results**

The Contractor shall submit, with the Final Technical Progress Report, a summary (not to exceed 200 words) of salient results achieved during the performance of the contract.

### **E. Other Technical Progress Reports**

1. **Draft Reports and Final Reports for Non-Clinical Studies and Clinical Studies**
  - The non-clinical study and Clinical study reports shall follow the format of International Conference on Harmonization document ICH E3 "Guidelines on Structure and Content of Clinical Study Reports" ([http://www.pharmacontract.ch/support/su\\_ich\\_liste.htm](http://www.pharmacontract.ch/support/su_ich_liste.htm))

- Draft and Final Reports for Non-Clinical Studies and Clinical Studies funded by this contract will be submitted to the Contracting Officer's Representative and Contracting Officer (CO) for review and comment within the time frames set forth by ARTICLE F.2. of this contract.
- Subcontractor prepared reports received by the Prime Contractor shall be submitted to the Contracting Officer's Representative and Contracting Officer (CO) for review and comment as set forth by ARTICLE F.2. of this contract.
- The Government shall provide written comments to the Draft Final Report for Non-Clinical Studies and Clinical Studies in accordance with the dates set forth in ARTICLE F.2. of this contract.
- The comprehensive Final Report for Non-Clinical Studies and Clinical Studies will be submitted to the Contracting Officer and the Contracting Officer's Representative as set forth by ARTICLE F.2. of this contract. The final version shall include or address the Contracting Officer's Representative comments and Contracting Officer comments on the draft report.
- See section ARTICLE F.2. REPORTING REQUIREMENTS AND DELIVERABLES for additional clarification and deliverable requirements.

## 2. **Audit Reports**

- Within thirty (30) calendar days of a contractor-initiated audit related to conformance to FDA regulations and guidance, including adherence to GLP, GMP, GCP guidelines, the Contractor shall provide copies of the audit report.
- It must include a plan for addressing areas of nonconformance to FDA regulations and guidelines for GLP, GMP, or GCP guidelines as identified in the final audit report.

## 3. **Other Technical Documents:**

- Upon request, Contractor shall provide CO and COR with the following contract funded documents as specified below but not limited to: Process Development Reports, Assay Qualification Plan/Report, Assay Validation Plan/Report, Assay Technology Transfer Report, Batch Records, Standard Operating Procedures, Master Production Records, Certificate of Analysis, Clinical Studies Data or Reports.
- The CO and COR reserve the right to request within the Period of Performance a non-proprietary technical document for distribution within the USG.
- **Data:** The Contractor shall provide raw data or specific analysis of data generated with contract funding at the request of the BARDA COR. See FAR 52.227-14. Data/data analysis will be delivered to the Government pursuant to the terms set forth in ARTICLE F.2 of this contract.
- Contractor shall provide the requested document within 10 business days of CO or COR request. Contractor can request additional time on an as needed basis. If edits are recommended, the Contractor must address, in writing, concerns raised by BARDA



## **F. Deliverables Arising from FDA Correspondence**

### **a. FDA Meetings**

The Contractor shall forward the dates and times of any meeting with the FDA to BARDA and make arrangements for appropriate BARDA staff to attend the FDA meetings. BARDA staff shall include up to a maximum of four people (COR, CO and up to 2 subject matter experts).

- Contractor shall notify BARDA of upcoming FDA meeting within 24 hours of scheduling Type A, B or C meetings OR within 24 hours of meeting occurrence for ad hoc meetings.
- The Contractor shall forward initial Contractor and FDA-issued draft minutes and final minutes of any meeting with the FDA to BARDA within 3 business days of receipt. All documents shall be duly marked as either "Draft" or "Final".

### **b. FDA Submissions**

The Contractor shall provide BARDA the opportunity to review and comment upon all draft documents before submission to the FDA. Contractor shall provide BARDA with an electronic copy of the final FDA submission. All documents shall be duly marked as either "Draft" or "Final".

- Contractor shall submit draft FDA submissions to BARDA at least 15 business days prior to FDA submission
- BARDA will provide feedback to Contractor within 10 business days of receipt
- If corrective action is recommended, the Contractor must address, in writing, its consideration of all concerns raised by BARDA
- The Contractor shall consider revising their documents to address BARDA's concerns and/or recommendations prior to FDA submission
- Final FDA submissions shall be submitted to BARDA concurrently or no later than 1 calendar day of its submission to CDER.

### **c. FDA Audits**

In the event of an FDA inspection which occurs as a result of this contract and for the product, or for any other FDA inspection that has the reasonable potential to impact the performance of this contract, the Contractor shall provide the USG with an exact copy (non-redacted) of the FDA Form 483 and the Establishment Inspection Report (EIR). The Contractor shall provide the COR and CO with copies of the plan for addressing areas of non-conformance to FDA regulations for GLP, GMP, or GCP guidelines as identified in the audit report, status updates during the plans execution and a copy of all final responses to the FDA. The Contractor shall also provide redacted copies of any FDA audits received from subcontractors that occur as a result of this contract or for this product. The Contractor shall make arrangements for BARDA representative(s) to be present during the final debrief by the regulatory inspector.

- Contractor shall notify CO and COR within 10 business days of a scheduled FDA audit or within 24 hours of an ad hoc site visit/audit if the FDA does not provide advanced notice.
- Contractor shall provide copies of any FDA audit report received from subcontractors that occur as a result of this contract or for this product within 3 business days of receiving correspondence from the FDA or third party.

- Within 10 business days of audit report, Contractor shall provide CO with a plan for addressing areas of nonconformance, if any are identified.

#### **d. Manufacturing Campaign Reports**

Contractor shall provide Manufacturing Campaign Reports to BARDA for review and comment prior to submission to FDA.

The COR and CO reserve the right to request within the PoP a non-proprietary Manufacturing Campaign Report for distribution within the USG.

- Contractor will submit Manufacturing Campaign Reports at least 15 business days prior to FDA submission.
- If corrective action is recommended, Contractor must address, in writing, all concerns raised by BARDA.
- Contractor shall consider revising reports to address BARDA's concerns and/or recommendations prior to FDA submission.
- Final FDA submission shall be submitted to BARDA concurrently or no later than 1 business day after submission to the FDA.

#### **e. Other FDA Correspondence**

The Contractor shall memorialize any correspondence between Contractor and FDA and submit to BARDA. All documents shall be duly marked as either "Draft" or "Final."

- Contractor shall provide written summary of any FDA correspondence within 3 business days of correspondence.

### **G. Other Reports/Deliverables**

#### **1. Meeting Minutes**

The Contractor shall provide an electronic copy of meeting minutes for all conference calls and face-to-face meetings including the Government and Contractor. Minutes will be submitted directly to the BARDA COR for review and official approval pursuant to the terms set forth in ARTICLE F.2 of this contract. After contract award a Kickoff meeting will be held. The contractor shall prepare and submit a report of this Kickoff meeting based on the minutes to the meeting.

#### **2. Copies of FDA Correspondence and Meeting Summaries**

1. For any formal meeting with the FDA, the contractor shall forward initial draft minutes and subsequently final meeting minutes appropriately formatted within thirty (30) calendar days of the FDA meeting to the BARDA Contracting Officer's Technical Representative. All documents shall be duly marked as either "Draft" or "Final".
2. The contractor shall forward the final draft minutes of any informal meeting with the FDA to BARDA.
3. The contractor shall forward the dates and times of any meeting with the FDA to BARDA at least 30 days prior to the meeting and make arrangements for appropriate BARDA staff to attend FDA meetings. BARDA staff shall include up to a maximum of four people (COTR, CO and up to two Subject Matter Experts (SMEs)).
4. The contractor shall provide BARDA the opportunity to review and comment

upon any documents to be submitted to the FDA. The contractor shall provide BARDA with five (5) business days in which to review and provide comments back to the contractor.

#### **H. SUBJECT INVENTION REPORTING REQUIREMENT**

All reports and documentation required by FAR Clause 52.227-11, including, but not limited to, the invention disclosure report, the confirmatory license, and the Government support certification, shall be directed to the contracting officer. The final invention statement (see FAR 27.303(b)(2)(ii)) shall be submitted to the Contracting Officer on the expiration date of the contract. See also FAR clause 52.227-11 (Patent Rights-Ownership by the Contractor).

Reports and documentation submitted to the Contracting Officer shall be sent to the Contracting Officer to the address set forth in SECTION G – CONTRACT ADMINISTRATION DATA.

If no invention is disclosed or no activity has occurred on a previously disclosed invention during the applicable reporting period, a negative report shall be submitted to the Contracting Officer at the address listed above.

### **SECTION G - CONTRACT ADMINISTRATION DATA**

#### **ARTICLE G.1. CONTRACTING OFFICER**

The following Contracting Officer (CO) will represent the Government for the purpose of this contract:

Thomas P. Hastings-Tickerhoff, Contracting Officer  
DHHS/OS/ASPR/AMCG  
330 Independence Avenue, S.W. Room G640  
Washington, D.C. 20201  
E-mail: [thomas.hastings-tickerhoff@hhs.gov](mailto:thomas.hastings-tickerhoff@hhs.gov)

- 1) The Contracting Officer (CO) is the only individual who can legally commit the Government to the expenditure of public funds. No person other than the Contracting Officer can make any changes to the terms, conditions, general provisions, or other stipulations of this contract.
- 2) The Contracting Officer is the only person with the authority to act as agent of the Government under this contract. Only the Contracting Officer has authority to (1) direct or negotiate any changes in the statement of work; (2) modify or extend the period of performance; (3) change the delivery schedule; (4) authorize reimburse to the Contractor of any costs incurred during the performance of this contract; (5) otherwise change any terms and conditions of this contract.
- 3) No information other than that which may be contained in an authorized modification to this contract, duly issued by the Contracting Officer, which may be received from any person employed by the US Government, other otherwise, shall be considered grounds for deviation from any stipulation of this contract.
- 4) The Government may unilaterally change its CO designation.

#### **ARTICLE G.2. CONTRACTING OFFICER'S REPRESENTATIVE (COR)**

The following Contracting Officer's Representative (COR) will represent the Government for the purpose of this contract:

Narayan Iyer, PhD  
Contracting Officer's Representative (COR)

Division of CBRN Countermeasures  
Biomedical Advanced Research and Development Authority (BARDA)  
Office of the Assistant Secretary for Preparedness and Response (ASPR)  
Department of Health and Human Services (DHHS)

Mailing Address:

330 Independence Avenue, S.W. Room G644  
Washington, D.C. 20201  
Office: 202-260-0455  
Email: [narayan.iyer@hhs.gov](mailto:narayan.iyer@hhs.gov)

The COR is responsible for:

- 1) Monitoring the Contractor's technical progress, including the surveillance and assessment of performance and recommending to the Contracting Officer changes in requirements;
- 2) Assisting the Contracting Officer in interpreting the statement of work and any other technical performance requirements;
- 3) Performing technical evaluation as required;
- 4) Performing technical inspections and acceptances required by this contract; and
- 5) Assisting in the resolution of technical problems encountered during performance. The Government may unilaterally change its COR designation.

**ARTICLE G.3. KEY PERSONNEL**

Pursuant to the Key Personnel clause incorporated in Section I of this contract, the following individuals are considered to be essential to the work being performed hereunder:

NAME	ORGANIZATION	TITLE
John K. Fraser	Cytori Therapeutics, Inc.	Chief Scientist
Douglas M. Arm	Cytori Therapeutics, Inc.	Senior VP of Operations
Kenneth K. Kleinhenz	Cytori Therapeutics, Inc.	VP for Regulatory and Quality Affairs
Frankie Yan Fung Ng	Cytori Therapeutics, Inc.	Project anager

The key personnel specified in this contract are considered to be essential to work performance. At least thirty (30) business days prior to diverting any of the specified individuals to other programs or contracts, including, where practicable, an instance when an individual must be replaced as a result of leaving the employ of the Contractor, the Contractor shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. The Contractor shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer.

**ARTICLE G.4. CONTRACT FINANCIAL REPORT**

a. Financial reports on the attached Financial Report of Individual Project/Contract (see Attachments 2 and 3) shall be submitted by the Contractor in accordance with the instructions for completing this form, which accompany the form, in an electronic copy, not later than the 30th business day after the close of the reporting period. The line entries for subdivisions of work and elements of cost (expenditure categories) which shall be reported within the total contract are discussed in paragraph e., below. Subsequent changes and/or additions in the line entries shall be made in writing.

b. Unless otherwise stated in that part of the instructions for completing this form, entitled "PREPARATION INSTRUCTIONS," (see Attachment 4) all columns A through J, shall be completed for each report submitted.

- c. The first financial report shall cover the period consisting of the first full three calendar months following the date of the contract, in addition to any fractional part of the initial month. Thereafter, reports will be on a quarterly basis.
- d. The Contracting Officer may require the Contractor to submit detailed support for costs contained in one or more interim financial reports. This clause does not supersede the record retention requirements in FAR Part 4.7.
- e. The listing of expenditure categories to be reported is incorporated within the Attachment entitled, "Financial Report of Individual Project/Contract," located in SECTION J and made a part of this contract.
- f. The Government may unilaterally revise the "Financial Report of Individual Project/Contract" to reflect the allotment of additional funds.

**ARTICLE G.5. INVOICE/FINANCING REQUEST AND CONTRACT FINANCIAL REPORTING**

- 1) The billing address that should be shown on the invoice is the same as defined in ARTICLE G.2. of this contract.
- 2) The Contractor shall submit an electronic copy of contract monthly invoices/financial reports to the Contracting Officer and Contract Specialist as defined above, in ARTICLE G of this contract.
- 3) Contractor invoices/financial reports shall conform to the form, format, and content requirements of the instructions for Invoice/Financing requests and Contract Financial Reporting made a part of the contract in Section J (See also ARTICLE B.5. and Attachment 2) .
- 4) Monthly invoices must include the cumulative total expenses to date, adjusted (as applicable) to show any amounts suspended by the Government.
- 5) The Contractor agrees to immediately notify the Contracting Officer in writing if there is an anticipated overrun (any amount) or unexpended balance (greater than 10 percent) of the estimated costs for the base segment or any option segment(s) (See estimated costs under Articles B.2. and B.3., of the contract) and the reasons for the variance. Also refer to the requirements of the Limitation of Cost FAR 52.232-20 clause in the contract.
- 6) All invoice submissions shall be in accordance with FAR Clause 52.232-25 (c) in Section I of this contract.

**ARTICLE G.6. REIMBURSEMENT OF COST**

- 1) The Government shall reimburse the Contractor the cost determined by the Contracting Officer to be allowable (hereinafter referred to as allowable cost) in accordance with the clause entitled Allowable Cost and Payment in Section I, Contract Clauses, and FAR Subpart 31.2. Examples of allowable costs include, but are not limited to, the following:
  - a) All direct materials and supplies that are used in the performing of the work provided for under the contract, including those purchased for subcontracts and purchase orders.
  - b) All direct labor, including supervisory, that is properly chargeable directly to the contract, plus fringe benefits.
  - c) All other items of cost budgeted for and accepted in the negotiation of this basic contract or modifications thereto.
  - d) Travel costs including per diem or actual subsistence for personnel while in an actual travel status in direct performance of the work and services required under this contract subject to the following:

- (i) Air travel shall be by the most direct route using "air coach" or "air tourist" (less than first class) unless it is clearly unreasonable or impractical (e.g., not available for reasons other than avoidable delay in making reservations, would require circuitous routing or entail additional expense offsetting the savings on fare, or would not make necessary connections).
- (ii) Rail travel shall be by the most direct route, first class with lower berth or nearest equivalent.
- (iii) Costs incurred for lodging, meals, and incidental expenses shall be considered reasonable and allowable to the extent that they do not exceed on a daily basis the per diem rates set forth in the Federal Travel Regulation (FTR).
- (iv) Travel via privately owned automobile shall be reimbursed at not more than the current General Services Administration (GSA) FTR established mileage rate.

#### **ARTICLE G.7. INDIRECT COST RATES**

The following rates will be utilized for billing purposes during both the base and option periods: Fringe benefits at 24%, and a general and administrative expense rate (G&A) of 50% for FY2012 and 51% for FY2013 through FY2016. The billing rates for the option period will be based on the incurred cost submission for the previous calendar year, subject to Government audit adjustments. Final rate proposals must be sent to the Contracting Officer, within 6 months subsequent to the fiscal year end. (See also FAR Clause 52.216-7 incorporated herein)

#### **ARTICLE G.8. POST AWARD EVALUATION OF CONTRACTOR PERFORMANCE**

##### **1. Contractor Performance Evaluations**

Interim and final evaluations of Contractor performance will be prepared on this contract in accordance with FAR Subpart 42.15. The final performance evaluation will be prepared at the time of completion of work. In addition to the final evaluation, an interim evaluation shall be submitted September 27, 2013.

Interim and final evaluations will be provided to the Contractor as soon as practicable after completion of the evaluation. The Contractor will be permitted thirty days to review the document and to submit additional information or a rebutting statement. If agreement cannot be reached between the parties, the matter will be referred to an individual one level above the Contracting Officer whose decision will be final.

Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

##### **2. Electronic Access to Contractor Performance Evaluations**

Contractors that have Internet capability may access evaluations through a secure Web site for review and comment by completing the registration form that can be obtained at the following address:

<http://www.cpars.csd.disa.mil/cparsmain.htm>

The registration process requires the Contractor to identify an individual that will serve as a primary contact and who will be authorized access to the evaluation for review and comment. In addition, the Contractor will be required to identify an alternate contact that will be responsible for notifying the cognizant contracting official in the event the primary contact is unavailable to process the evaluation within the required 30-day time frame.

#### **ARTICLE G.9. CONTRACT COMMUNICATIONS/CORRESPONDENCE (JULY 1999)**

The Contractor shall identify all correspondence, reports, and other data pertinent to this contract by imprinting the contract number from Page 1 of the contract.

#### **ARTICLE G.10. GOVERNMENT PROPERTY**

1. In addition to the requirements of the clause, GOVERNMENT PROPERTY, incorporated in SECTION I of this contract, the Contractor shall comply with the provisions of HHS Publication,

"Contractor's Guide for Control of Government Property," which is incorporated into this contract by reference. This document can be accessed at:

<http://www.hhs.gov/hhsmanuals/> (HHS Logistics Management Manual)

Among other issues, this publication provides a summary of the Contractor's responsibilities regarding purchasing authorizations and inventory and reporting requirements under the contract.

2. Notwithstanding the provisions outlined in the HHS Publication, "Contractor's Guide for Control of Government Property," which is incorporated in this contract in paragraph 1. above, the Contractor shall use the form entitled, "Report of Government Owned, Contractor Held Property" for submitting summary reports required under this contract, as directed by the Contracting Officer or his/her designee. This form is included as an attachment in SECTION J of this contract.

3. Title will vest in the Government for equipment purchased as a direct cost.

#### **ARTICLE G.11. EXERCISE OF OPTIONS**

Unless the Government exercises its option pursuant to the Option Clause set forth in Section I, Article I.2, the contract will consist only of **CLIN 0001** of the Statement of Work, Deliverables and Requirements as defined in Sections C, F and J of the contract. Pursuant to **FAR Clause 52.217-9 (Option to Extend the Term of the Contract)** set forth in Section I of this contract, under Article I.2, the Government may, by unilateral contract modification, require the Contractor to perform **the additional CLINs listed in Section B, Article B.3.**, and as also defined in Sections C, F and J of this contract. If the Government exercises an option, written notice must be given to the Contractor within 30 days after the Government has completed its analysis of the deliverables associated with the applicable GO/NO-GO Decision gates; and the Government must give the Contractor a preliminary written notice of its intent to exercise the option at least 30 days before the contract expires. The amount of the contract may then be increased as set forth in Section B, Article B.3 provided that funds are available.

### **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

#### **ARTICLE H.1. CLINICAL AND NON-CLINICAL TERMS OF AWARD**

BARDA has a responsibility to obtain documentation concerning mechanisms and procedures that are in place to protect the safety of participants and animals in BARDA funded clinical trials and non-clinical studies. Therefore, the Contractor shall develop a protocol for each clinical trial *and* non-clinical study funded under this contract and submit all such protocols and protocol amendments to the BARDA Contracting Officer's Representative (COR) for evaluation and comment. Approval is required before work under a protocol may begin. BARDA COR comments will be forwarded to the Contractor within ten (10) business days. The Contractor must address, in writing, all concerns (e.g. study design, safety, regulatory, ethical, and conflict of interest) raised by the BARDA COR.

If the draft protocols are to be submitted to the FDA, BARDA review shall occur before submission, pursuant to the terms set forth by ARTICLE F.2 of this contract. The Contractor shall consider revising their protocols to address BARDA's concerns and recommendations prior to FDA submission. The Contractor must provide BARDA with a copy of FDA submissions, within the time frame set forth by ARTICLE F.2 of this contract.

Execution of clinical and non-clinical studies requires written authorization from BARDA. The Government will provide written authorization to the Contractor upon either 1) receiving documentation in which all COR comments have been satisfactorily addressed; or 2) receiving documentation that the FDA has reviewed and commented on the protocol.

BARDA shall have rights to all protocols, data resulting from execution of these protocols, and final reports funded by BARDA under this contract, as set forth in PART II of this contract and defined in the FAR. BARDA reserves the right to request that the Awardee provide any contract deliverable in a non-proprietary form to ensure BARDA has the ability to review and distribute the deliverables as BARDA deems necessary.

Important information regarding performing human subject research is available at <http://www3.niaid.nih.gov/healthscience/clinicalstudies/>.

Any updates to technical reports are to be addressed in the Monthly and Annual Progress Reports. The Contractor shall advise the Contracting Officer's Technical Representative or designee in writing and via electronic communication in a timely manner of any issues potentially affecting contract performance.

#### **1. Non-Clinical Terms of Award**

These Non-Clinical Terms of Award detail an agreement between the Biomedical Advanced Research and Development Authority (BARDA) and the Contractor; they apply to all grants and contracts that involve non-clinical research.

##### **a. Safety and Monitoring Issues**

###### **i. PHS Policy on Humane Care and use of Laboratory Animals**

Before award and then with the annual progress report, the Contractor must submit to BARDA a copy of the current Institutional Animal Care and Use Committees (IACUC) documentation of continuing review and approval and the Office of Laboratory Animal Welfare (OLAW) federal wide assurance number for the institution or site.

If other institutions are involved in the research (e.g., a multicenter trial or study), each institution's IACUC must review and approve the protocol. They must also provide BARDA initial and annual documentation of continuing review and approval and federal wide assurance number.

The Contractor must ensure that the application, as well as all protocols, are reviewed by the performing institution's IACUC.

To help ensure the safety of animals used in BARDA-funded studies, the Contractor must provide BARDA copies of documents related to all major changes in the status of ongoing protocols, including the following:

- All amendments or changes to the protocol, identified by protocol version number, date, or both and date it is valid.



- All material changes in IACUC policies and procedures, identified by version number, date, and all required signatories (if applicable).
- Termination or temporary suspension of the study(ies) for regulatory issues.
- Termination or temporary suspension of the protocol.
- Any change that is made in the specific IACUC approval for the indicated study(ies).
- Any other problems or issues that could affect the scientific integrity of the study(ies), i.e., fraud, misrepresentation, misappropriation of funds, etc.

Contractor must notify BARDA of any of the above changes within five (5) working days from the time the Contractor becomes aware of such changes by email or fax, followed by a letter signed by the institutional business official, detailing notification of the change of status to the local IACUC and a copy of any responses from the IACUC.

If a non-clinical protocol has been reviewed by an institutional biosafety committee (IBC) or the NIH Recombinant DNA Advisory Committee (RAC), the Contractor must provide information about the initial and ongoing review and approval, if any. See the NIH Guidelines for Research Involving Recombinant DNA Molecules.

## **ii. Non-Clinical Data and Safety Monitoring Requirements**

BARDA strongly recommends continued safety monitoring for all non-clinical studies of investigational drugs, devices, or biologics. FDA expects non-clinical studies to include safety in addition to efficacy. Awardee should consider evaluation of clinical relevant safety markers in the pivotal and non-pivotal, non-clinical studies. In preparation for clinical trials of licensed or not yet licensed products, it is imperative that BARDA-sponsored studies of any type measure the risk and safety parameters that are elicited and proved a safety profile from the studies for future human risk assessment.

A risk is minimal where the probability and magnitude of harm or discomfort anticipated in the proposed research are not greater than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests. For example, the risk of drawing a small amount of blood from a healthy subject for research purposes is no greater than the risk of doing so as part of a routine physical examination (45 CFR 46.102(i)).

BARDA will work with the Contractor on decisions regarding the type and extent of safety data accrual to be employed before the start of efficacy or safety studies.

The Contractor shall inform BARDA of any upcoming site visits and/or audits of CRP facilities funded under this effort. BARDA reserves the right to accompany the Contractor on site visits and/or audits of CRO's as BARDA deems necessary.

**b. BARDA Review Process before Non-Clinical study Execution Begins**

BARDA is under the same policy-driven assurances as NIH in that it has a responsibility to ensure that mechanisms and procedures are in place to protect the safety and welfare of animals used in BARDA-funded non-clinical trials. Therefore, before study execution, the Contractor must provide the following (as applicable) for review and comment by BARDA:

- IACUC approved (signed) non-clinical research protocol identified by version number, date, or both, including details of study design, euthanasia criteria, proposed interventions, and exclusion criteria.
- For non-pivotal mouse studies, the Contractor will provide an annual animal care and use protocol.
- Documentation of IACUC approval, including OLAW federal wide number, IACUC registration number, and IACUC name.
- Contractor should reduce the number of animals required for a study using power of statistics.
- Plans for the management of side effects, rules for interventions and euthanasia criteria.
- Procedures for assessing and collecting safety data were appropriate.
- If a study is contracted through Contract Research Organizations (CROs), work orders and service agreements the Contractor shall assure an integrated safety documentation plan is in place for the study site, pharmacy service records on the dosing material to be used and excipients, and laboratory services (including histopathology).
- Documentation that the Contractor and all required staff responsible for the conduct of the research have received training in the protection and handling of animals, or that the CRO has the required documentation.
- Purchasing of animals and/or other supplies for non-clinical studies funded in part or in whole by BARDA requires written approval by the Contracting Officer in accordance with the contract. The Contractor must have the ability to return/re-sell animals, at purchase price, to distributor or a third part, in the event that the Contracting Officer Authorization is not granted.
- Provide justification for whether studies require good laboratory practice (GLP) conditions.
- Provide justification for whether studies will be classified as non-pivotal or pivotal studies.

Documentation of each of the above items shall be submitted to the BARDA for evaluation and comment in conjunction with the protocol. Execution of non-clinical studies requires written authorization from BARDA in accordance with this section of the contract.

**c. References**

Public Health Service Policy on Humane Care and Use of Laboratory Animals:

<http://grants.nih.gov/grants/olaw/InvestigatorsNeed2Know.pdf>

USDA Animal Welfare Act:

[http://awic.nal.usda.gov/nal\\_display/index.php?info\\_center=3&tax\\_level=3&tax\\_subject=182&topic\\_id=1118&level3\\_id=6735&level4\\_id=0&level5\\_id=0&placement\\_default=0](http://awic.nal.usda.gov/nal_display/index.php?info_center=3&tax_level=3&tax_subject=182&topic_id=1118&level3_id=6735&level4_id=0&level5_id=0&placement_default=0)

## 2. Clinical Terms of Award

These Clinical Terms of Award detail an agreement between the Biomedical Advanced Research and Development Authority (BARDA) and the Contractor; they apply to all grants and contracts that involve clinical research.

### i. Safety and Monitoring Issues

#### a. Institutional Review Board or Independent Ethics Committee Approval

Before award and then with the annual progress report, the Contractor must submit to BARDA a copy of the current IRB-or IEC-approved informed consent document, documentation of continuing review and approval and the OHRP federal wide assurance number for the institution or site.

If other institutions are involved in the research (e.g., a multicenter clinical trial or study), each institution's IRB or IEC must review and approve the protocol. They must also provide BARDA initial and annual documentation of continuing review and approval, including the current approved informed consent document and federal wide number.

The Contractor must ensure that the application as well as all protocols is reviewed by their IRB or IEC.

To help ensure the safety of participants enrolled in BARDA-funded studies, the Contractor must provide BARDA copies of documents related to all major changes in the statuses of ongoing protocols, including the following:

- All amendments or changes to the protocol, identified by protocol version number, date, or both and dates it is valid.
- All changes in informed consent documents, identified by version number, dates, or both and dates it is valid.
- Termination or temporary suspension of patient accrual.
- Termination or temporary suspension of the protocol.
- Any change in IRB approval.
- Any other problems or issues that could affect the participants in the studies.

The Contractor must notify BARDA through the Project Officer (PO) or Contracting Officer (CO) of any of the above changes within five (5) working days by email or fax, followed by a letter signed by the institutional business official, detailing notification of the change of status to the local IRB and a copy of any responses from the IRB or IEC.

If a clinical protocol has been reviewed by an institutional biosafety committee (IBC) or the NIH Recombinant DNA Advisory Committee (RAC), the Contractor must provide information about the initial and ongoing review and approval, if any. See the NIH Guidelines for Research Involving Recombinant DNA Molecules.

#### b. Data and Safety Monitoring Requirements

BARDA strongly recommends independent safety monitoring for clinical trials of investigational drugs, devices, or biologics; clinical trial of licensed products; and clinical research of any type involving more than minimal risk to volunteers. Independent monitoring can take a variety of forms. Phase III

clinical trials must be reviewed by an independent data and safety monitoring board (DSMB); other trials may require DSMB oversight as well. The Contractor shall inform BARDA of any upcoming site visits and/or audits of CRO facilities funded under this effort. BARDA reserves the right to accompany the Contractor on site visits and/or audits of CROs as BARDA deems necessary.

A risk is minimal where the probability and magnitude of harm or discomfort anticipated in the proposed research and not greater than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests. For examples, the risk of drawing a small amount of blood from a healthy individual for research purposes is no greater than the risk of doing so as part of a routine physical examination (45 CFR 46.1021).

Final decisions regarding the type of monitoring to be used must be made jointly by BARDA and the Contractor before enrollment starts. Discussions with the responsible BARDA Project Officer regarding appropriate safety monitoring and approval of the final monitoring plan by BARDA must occur before patient enrollment begins and may include discussions about the appointment of one of the following.

- **Independent Safety Monitor** – a physician or other appropriate expert who is independent of the study and available in real time to review and recommend appropriate action regarding adverse events and other safety issues.
- **Independent Monitoring Committee (IMC) or Safety Monitoring Committee (SMC)** – a small group of independent investigators and biostatisticians who review data from a particular study.
- **Data and Safety Monitoring Board** – an independent committee charged with reviewing safety and trial progress and providing advice with respect to study continuation, modification, and termination. The Contractor may be required to use an established BARDA DSMB or to organize an independent DSMB. All phase III clinical trials must be reviewed by a DSMB; other trials may require DSMB oversight as well.

Please refer to: NIAID Principles for Use of a Data and Safety Monitoring Board (DSMB) For Oversight of Clinical Trials Policy

When a monitor or monitoring board is organized, a description of it, its charter or operating procedures (including a proposed meeting schedule and plan for review of adverse events), and roster and *curriculum vitae* from all members must be submitted to and approved by BARDA before enrollment starts. The Contractor will also ensure that the monitors and board members report any conflicts of interest and the Contractor will maintain a record of this. The Contractor will share conflict of interest reports with BARDA.

Additionally, the Contractor must submit written summaries of all reviews conducted by the monitoring group to the BARDA within thirty (30) days of reviews or meetings.

ii. **BARDA Protocol Review Process Before Patient Enrollment Begins**

BARDA has a responsibility to ensure that mechanisms and procedures are in place to protect the safety of participants in BARDA-supported clinical trial. Therefore, before patient accrual or participant enrollment, the Contractor must ensure the following (as applicable) are in place prior to patient accrual or enrollment at each participating institution.

- IRB- or IEC-approved clinical research protocol identified by version number, date, or both, including details of study design, proposed interventions, patient eligibility, and exclusion criteria.
- Documentation of IRB or IEC approval, including OHRP federal wide number, IRB or IEC registration number, and IRB and IEC name.
- IRB- or IEC- approved informed consent document, identified by version number, date, or both and dates it is valid.
- Plans for the management side effects.
- Procedures for assessing and reporting adverse events.
- Plans for data and safety monitoring (see B above) and monitoring of the clinical study site, pharmacy, and laboratory.
- Documentation that the Contractor and all study staff responsible for the design or conduct of the research have received training in the protection of human subjects.

Documentation to demonstrate that each of the above items are in place shall be submitted to the BARDA) for evaluation and comment in conjunction with the protocol. Execution of clinical studies requires written authorization from BARDA in accordance with this section of this contract.

**iii. Investigational New drug or Investigational Device Exemption Requirements**

Consistent with federal regulations, clinical research projects involving the use of investigational therapeutics, vaccines, or other medical interventions (including licensed products and devices for a purpose other than that for which they were licensed) in humans under a research protocol must be performed under a Food and Drug Administration (FDA) investigational new drug (IND) or investigational device exemption (IDE).

Exceptions must be granted in writing by FDA. If the proposed clinical trial will be performed under an IND or IDE, the Contractor must provide BARDA with the name and institution of the IND or IDE sponsor, the date the IND or IDE was filed with FDA, the FDA IND or IDE number, any written comments from GDA, and the written responses to those comments.

Unless FDA notifies Contractor otherwise, The Contractor must wait thirty (30) calendar days from FDA receipt of an initial IND or IDE application before initiating a clinical trial.

The Contractor must notify BARDA if the FDA places the study on clinical hold and provide BARDA any written comments from FDA, written responses to the comments, and documentation in writing that the hold has been lifted.

The Contractor must not use grant or contract funds during a clinical hold to fund clinical studies that are on hold. The Contractor must not enter into any new financial obligations related to clinical activities for the clinical trial on clinical hold.

**iv. Required Time-Sensitive Notification**

Under an IND or IDE, the sponsor must provide FDA safety reports of serious adverse events. Under these Clinical Terms of Award, the Contractor must submit copies to the responsible BARDA representative or the Contracting Officer's technical representative (COR) as follows:

- Expedited safety report of unexpected or life-threatening experience or death – A copy of any report of unexpected or life-threatening experience or death associated with the use of an IND drug, which must be reported to FDA by telephone or fax as soon as possible but no later than seven (7) days after the IND sponsor's receipt of the information, must be submitted to the BARDA representative or the contracting officer's technical representative within 24 hours of FDA notification.
- Expedited safety reports of serious and unexpected adverse experiences – A copy of any report of unexpected and serious adverse experience associated with use of an IND drug or any finding from tests in laboratory animals that suggests a significant risk for human subjects, which must be reported in writing to FDA as soon as possible but no later than 15 day after the IND sponsor's receipt of the information, must be submitted to the BARDA representatives or the Contracting Officer's Technical Representative within 24 hours of FDA notification.
- IDE reports of unanticipated adverse device effect – A copy of any reports of unanticipated adverse device effect submitted to FDA must be submitted to the BARDA representative or the Contracting Officer's Technical Representative within 24 hours of FDA notification.
- Expedited safety reports – should be sent to the BARDA representative or the Contracting Officer's Technical Representative concurrently with the report to FDA.
- Other adverse events documented during the course of the trial should be included in the annual IND or IDE report and reported to the BARDA annually.

In case of problems or issues, the BARDA representative or the Contracting Officer's Technical Representative will contract the Contractor within ten (10) working days by email or fax, followed within thirty (30) calendar days by an official letter to the Contractor's Project Leader, with a copy to the institutions' office of sponsored programs, listing issues and appropriate actions to be discussed.

- Safety reporting for research not performed under an IND or IDE.

Final decisions regarding ongoing safety reporting requirements for research not performed under an IND or IDE must be made jointly by the BARDA Project Officer or the Contracting Officer's Technical Representative and the Contractor.

**ARTICLE H.2. PROTECTION OF HUMAN SUBJECTS, HHSAR 352.270-4 (January 2006)**

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR Part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Human Research Protections (OHRP), Department of Health and Human Services. The Contractor further agrees to provide certification at least annually that the Institutional Review Board has reviewed and approved the procedures, which involve human subjects in accordance with 45 CFR Part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract and shall ensure that work is conducted in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. The Contractor shall not deem anything in this contract to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during the performance of this contract, the Contracting Officer determines, in consultation with OHRP that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. The Contracting Officer may communicate the notice of suspension by telephone with confirmation in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, after consultation with OHRP, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved Human Subject Assurances.

### **ARTICLE H.3. HUMAN MATERIALS (ASSURANCE OF OHRP COMPLIANCE)**

The acquisition and supply of all human specimen material (including fetal material) used under this contract shall be obtained by the Contractor in full compliance with applicable Federal, State and Local laws and the provisions of the Uniform Anatomical Gift Act in the United States, and no undue inducements, monetary or otherwise, will be offered to any person to influence their donation of human material.

The Contractor shall provide written documentation that all human materials obtained as a result of research involving human subjects conducted under this contract, by collaborating sites, or by subcontractors identified under this contract, were obtained with prior approval by the Office for Human Research Protections (OHRP) of an Assurance to comply with the requirements of 45 CFR 46 to protect human research subjects. This restriction applies to all collaborating sites without OHRP-approved Assurances, whether domestic or foreign, and compliance must be ensured by the Contractor.

Provision by the Contractor to the Contracting Officer of a properly completed "Protection of Human Subjects Assurance Identification/IRB Certification/Declaration of Exemption", Form OMB No. 0990-0263(formerly Optional Form 310), certifying IRB review and approval of the protocol from which the human materials were obtained constitutes the written documentation required. The human subject certification can be met by submission of a self designated form provided that it contains the information required by the "Protection of Human Subjects Assurance Identification/IRB Certification/Declaration of Exemption", Form OMB No. 0990-0263(formerly Optional Form 310).

### **ARTICLE H.4. RESEARCH INVOLVING HUMAN FETAL TISSUE**

All research involving human fetal tissue shall be conducted in accordance with the Public Health Service Act, 42 U.S.C. 289g-1 and 289g-2. Implementing regulations and guidance for conducting research on human fetal tissue may be found at 45 CFR 46, Subpart B and <http://grants1.nih.gov/grants/guide/notice-files/not93-235.html> and any subsequent revisions to this NIH Guide to Grants and Contracts ("Guide") Notice.

The Contractor shall make available, for audit by the Secretary, HHS, the physician statements and informed consents required by 42 USC 289g-1(b) and (c), or ensure HHS access to those records, if maintained by an entity other than the Contractor.

#### **ARTICLE H.5. NEEDLE EXCHANGE**

The Contractor shall not use contract funds to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

#### **ARTICLE H.6. CARE OF LIVE VERTEBRATE ANIMALS, HHSAR 352.270-5 (October 2009)**

(a) Before undertaking performance of any contract involving animal-related activities where the species is regulated by USDA, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2136 and 9 CFR sections 2.25 through 2.28. The Contractor shall furnish evidence of the registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR Sections 2.1-2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care, use and intended use of any live vertebrate animals in the performance of this contract shall conform with the Public Health Service (PHS) Policy on Humane Care of Use of Laboratory Animals (PHS Policy), the current Animal Welfare Assurance (Assurance), the Guide for the Care and Use of Laboratory Animals (National Academy Press, Washington, DC) and the pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 et seq. and 9 CFR Subchapter A, Parts 1-4). In case of conflict between standards, the more stringent standard shall govern.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and standards stated in paragraphs (a) through (c) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OLAW, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved Assurances.

Note: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737 (E-mail: [ace@aphis.usda.gov](mailto:ace@aphis.usda.gov); Web site: [http://www.aphis.usda.gov/animal\\_welfare](http://www.aphis.usda.gov/animal_welfare)).

#### **ARTICLE H.7. ANIMAL WELFARE**

All research involving live, vertebrate animals shall be conducted in accordance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals. This policy may be accessed at: <http://grants1.nih.gov/grants/olaw/references/phspol.htm> .



#### **ARTICLE H.8. PUBLICATION AND PUBLICITY**

No information related to data obtained under this contract shall be released or publicized without the prior written consent of BARDA.

In addition to the requirements set forth in HHSAR Clause 352.227-70, Publications and Publicity incorporated by reference in SECTION I of this contract, Section 507 of P.L. 104-208 mandates that Contractors funded with Federal dollars, in whole or in part, acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid solicitations and other documents. Contractors are required to state: (1) the percentage and dollar amounts of the total program or project costs financed with Federal money and; (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.

For purposes of this contract "publication" is defined as an issue of printed material offered for distribution or any communication or oral presentation of information, including any manuscript or scientific meeting abstract. Any publication containing data generated under this contract must be submitted for BARDA review no less than thirty (30) calendar days for manuscripts and fifteen (15) calendar days for abstracts before submission for public presentation or publication." Contract support shall be acknowledged in all such publications substantially as follows:

"This project has been funded in whole or in part with Federal funds from the Department of Health and Human Services; Office of the Assistant Secretary for Preparedness and Response; Biomedical Advanced Research and Development Authority, under Contract No. HHSO100201200008C "

#### **ARTICLE H.9. REVIEW OF PRESS RELEASES**

Contractor agrees to accurately and factually represent the work conducted under the contract in all press releases.

Misrepresenting contract results or releasing information that is injurious to the integrity of BARDA may be construed as improper conduct. Press releases shall be considered to include the public release of information to any medium, excluding peer-reviewed scientific publications. The contractor shall ensure that the COR has received an advance copy of any press release related to the contract not less than six (6) business days prior to the issuance of the press release.

The Contractor shall acknowledge the support of the Department of Health and Human Service, Office of the Assistant Secretary for Preparedness and Response, Biomedical Advanced Research and Development Authority, whenever publicizing the work under this contract in any media by including an acknowledgment substantially as follows:

"This project has been funded in whole or in part with Federal funds from the Department of Health and Human Services; Office of the Assistant Secretary for Preparedness and Response; Biomedical Advanced Research and Development Authority, under Contract No. HHSO100201200008C"

**ARTICLE H.10. REPORTING MATTERS INVOLVING FRAUD, WASTE AND ABUSE**

Anyone who becomes aware of the existence or apparent existence of fraud, waste and abuse in BARDA funded programs is encouraged to report such matters to the HHS Inspector General's Office in writing or on the Inspector General's Hotline. The toll free number is 1-800-HHS-TIPS (1-800-447-8477). All telephone calls will be handled confidentially. The e-mail address is [Htips@os.dhhs.gov](mailto:Htips@os.dhhs.gov) and the mailing address is:

Office of Inspector General  
Department of Health and Human Services  
TIPS HOTLINE P.O. Box 23489  
Washington, D.C. 20026

**ARTICLE H.11. PROHIBITION ON CONTRACTOR INVOLVEMENT WITH TERRORIST ACTIVITIES**

The Contractor acknowledges that U.S. Executive Orders and Laws, including but not limited to E.O. 13224 and P.L. 107-56, prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Contractor to ensure compliance with these Executive Orders and Laws. This clause must be included in all subcontracts issued under this contract.

**ARTICLE H.12. CONFLICT OF INTEREST**

The Contractor represents and warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information. Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer promptly that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days. The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor shall promptly make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken. Remedies include termination of this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

**ARTICLE H.13. PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING ACTIVITIES AND HHSAR 352.203-70 ANTI-LOBBYING (Jan 2006)**

The Contractor is hereby notified of the restrictions on the use of Department of Health and Human Service's funding for lobbying of Federal, State and Local legislative bodies.

Section 1352 of Title 10, United States Code (Public Law 101-121, effective 12/23/89), among other things, prohibits a recipient (and their subcontractors) of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds (other than profits from a federal contract) to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal

actions; the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement. For additional information of prohibitions against lobbying activities, see FAR Subpart 3.8 and FAR Clause 52.203-12.

In addition, as set forth in HHSAR 352.203-70 "Anti-Lobbying" (January 2006), the current Department of Health and Human Services Appropriations Act provides that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support, or defeat legislation pending before the Congress, or any State or Local legislature except in presentation to the Congress, or any State or Local legislative body itself.

The current Department of Health and Human Services Appropriations Act also provides that no part of any appropriation contained in this Act shall be used to pay the salary or expenses of any contract or grant recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress, or any State or Local legislature.

#### **ARTICLE H.14. PRIVACY ACT APPLICABILITY**

- 1) Notification is hereby given that the Contractor and its employees are subject to criminal penalties for violation of the Privacy Act to the same extent as employees of the Government. The Contractor shall assure that each of its employees knows the prescribed rules of conduct and that each is aware that he or she can be subjected to criminal penalty for violation of the Act. A copy of 45 CFR Part 5b, Privacy Act Regulations, may be obtained at <http://www.gpoaccess.gov/cfr/index.html>
- 2) The Project Officer is hereby designated as the official who is responsible for monitoring contractor compliance with the Privacy Act.
- 3) The Contractor shall follow the Privacy Act guidance as contained in the Privacy Act System of Records number 09-25-0200. This document may be obtained at the following link: <http://oma.od.nih.gov/ms/privacy/pa-files/0200.htm>

#### **ARTICLE H.15. LABORATORY LICENSE REQUIREMENTS**

The Contractor shall comply with all applicable requirements of Section 353 of the Public Health Service Act (Clinical Laboratory Improvement Act as amended). This requirement shall also be included in any subcontract for services under the contract.

#### **ARTICLE H.16. DISSEMINATION OF INFORMATION (May 1998)**

No information related to data obtained under this contract shall be released or publicized without the prior written consent of the Contracting Officer.

#### **ARTICLE H.17. IDENTIFICATION AND DISPOSITION OF DATA**

The Contractor will be required to provide certain data generated under this contract to the Department of Health and Human Services (DHHS). DHHS reserves the right to review any other data determined by DHHS to have been generated under this contract. The Contractor shall keep copies of all data required by the Food and Drug Administration (FDA) relevant to this contract for the time specified by the FDA.

Contractor shall provide data or data analysis to Contracting Officer and Contracting Officer Representative within 20 business days of request.

#### **ARTICLE H.18. INFORMATION ON COMPLIANCE WITH ANIMAL CARE REQUIREMENTS**

Registration with the U. S. Dept. of Agriculture (USDA) is required to use regulated species of animals for biomedical purposes. USDA is responsible for the enforcement of the Animal Welfare Act (7 U.S.C. 2131 et. seq.), <http://www.nal.usda.gov/awic/legislat/awa.htm>.

The Public Health Service (PHS) Policy is administered by the Office of Laboratory Animal Welfare (OLAW) <http://grants2.nih.gov/grants/olaw/olaw.htm>. An essential requirement of the PHS Policy <http://grants2.nih.gov/grants/olaw/references/phspol.htm> is that every institution using live vertebrate animals must obtain an approved assurance from OLAW before they can receive funding from any component of the U. S. Public Health Service.

The PHS Policy requires that Assured institutions base their programs of animal care and use on the *Guide for the Care and Use of Laboratory Animals* <http://www.nap.edu/readingroom/books/labrats/> and that they comply with the regulations (9 CFR, Subchapter A) <http://www.nal.usda.gov/awic/legislat/usdaleg1.htm> issued by the U.S. Department of Agriculture (USDA) under the Animal Welfare Act. The *Guide* may differ from USDA regulations in some respects. Compliance with the USDA regulations is an absolute requirement of this Policy.

The Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC) <http://www.aaalac.org> is a professional organization that inspects and evaluates programs of animal care for institutions at their request. Those that meet the high standards are given the accredited status. As of the 2002 revision of the PHS Policy, the only accrediting body recognized by PHS is the AAALAC. While AAALAC Accreditation is not required to conduct biomedical research, it is highly desirable. AAALAC uses the *Guide* as their primary evaluation tool. They also use the *Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching*. It is published by the Federated of Animal Science Societies <http://www.fass.org>.

#### **ARTICLE H.19. REQUIREMENTS FOR ADEQUATE ASSURANCE OF PROTECTION OF VERTEBRATE ANIMAL SUBJECTS**

The PHS Policy on Humane Care and Use of Laboratory Animals requires that applicant organizations proposing to use vertebrate animals file a written Animal Welfare Assurance with the Office for Laboratory Animal Welfare (OLAW), establishing appropriate policies and procedures to ensure the humane care and use of live vertebrate animals involved in research activities supported by the PHS. The PHS Policy stipulates that an applicant organization, whether domestic or foreign, bears responsibility for the humane care and use of animals in PHS- supported research activities. Also, the PHS policy defines "animal" as "any live, vertebrate animal used, or intended for use, in research, research training, experimentation, biological testing or for related purposes." This Policy implements and supplements the U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training, and requires that institutions use the *Guide for the Care and Use of Laboratory Animals* as a basis for developing and implementing an institutional animal care and use program. This Policy does not affect applicable State or local laws or regulations that impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act as amended (7 USC 2131 et. seq.) and other Federal statutes and regulations relating to animals. These documents are available from the Office of Laboratory Animal Welfare, National Institutes of Health, Bethesda, MD 20892, (301) 496-7163. See <http://grants.nih.gov/grants/olaw/olaw.htm>.

No PHS supported work for research involving vertebrate animals will be conducted by an organization, unless that organization is operating in accordance with an approved Animal Welfare Assurance and provides verification that the Institutional Animal Care and Use Committee (IACUC) has reviewed and approved the proposed activity in accordance with the PHS policy. Applications may be referred by the PHS back to the institution for further review in the case of apparent or potential violations of the PHS Policy. No award to an individual will be

made unless that individual is affiliated with an assured organization that accepts responsibility for compliance with the PHS Policy. Foreign applicant organizations applying for PHS awards for activities involving vertebrate animals are required to comply with PHS Policy or provide evidence that acceptable standards for the humane care and use of animals will be met. Foreign applicant organizations are not required to submit IACUC approval, but should provide information that is satisfactory to the Government to provide assurances for the humane care of such animals.

#### **ARTICLE H.20. APPROVAL OF REQUIRED ASSURANCE BY OLAW**

Under governing regulations, federal funds which are administered by the Department of Health and Human Services, Office of Biomedical Advanced Research and Development Authority (BARDA) shall not be expended by the Contractor for research involving live vertebrate animals, nor shall live vertebrate animals be involved in research activities by the Contractor under this award unless a satisfactory assurance of compliance with 7 U.S.C. 2316 and 9 CFR Sections 2.25-2.28 is submitted within 30 days of the date of this award and approved by the Office of Laboratory Animal Welfare (OLAW). Each performance site (if any) must also assure compliance with 7 U.S.C. 2316 and 9 CFR Sections 2.25-2.28 with the following restriction: Only activities which do not directly involve live vertebrate animals (i.e. are clearly severable and independent from those activities that do involve live vertebrate animals) may be conducted by the Contractor or individual performance sites pending OLAW approval of their respective assurance of compliance with 7 U.S.C. 2316 and 9 CFR Sections 2.25-2.28. Additional information regarding OLAW may be obtained via the Internet at <http://grants2.nih.gov/grants/olaw/references/phspol.htm>

#### **ARTICLE H.21. EPA ENERGY STAR REQUIREMENTS**

In compliance with Executive Order 12845 (requiring Agencies to purchase energy efficient computer equipment) all microcomputers, including personal computers, monitors, and printers that are purchased using Government funds in performance of a contract shall be equipped with or meet the energy efficient low-power standby feature as defined by the EPA Energy Star program unless the equipment always meets EPA Energy Star efficiency levels. The microcomputer, as configured with all components, must be Energy Star compliant.

This low-power feature must already be activated when the computer equipment is delivered to the agency and be of equivalent functionality of similar power managed models. If the equipment will be used on a local area network, the vendor must provide equipment that is fully compatible with the network environment. In addition, the equipment will run commercial off-the-shelf software both before and after recovery from its energy conservation mode.

#### **ARTICLE H.22. EXPORT CONTROL NOTIFICATION**

Offerors are responsible for ensuring compliance with all export control laws and regulations that maybe applicable to the export of and foreign access to their proposed technologies. Offerors may consult with the Department of State with any questions regarding the International Traffic in Arms Regulation (ITAR) (22 CFR Parts 120-130) and /or the Department of Commerce regarding the Export Administration Regulations (15 CFR Parts 730-774).

#### **ARTICLE H.23. INSTITUTIONAL RESPONSIBILITY REGARDING CONFLICTING INTERESTS OF INVESTIGATORS**

The Contractor shall comply with the requirements of 45 CFR Part 94, Responsible Prospective Contractors, which promotes objectivity in research by establishing standards to ensure that investigators (defined as the principal investigator and any other person who is responsible for the design, conduct, or reporting of research funded under BARDA contracts) will not be biased by any conflicting financial interest. For the purposes of this part relating to financial interests, "Investigator" includes the Investigator's spouse and dependent children. 45 CFR Part 94 is available at the following Web site: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=9f130b6d2d48bb73803ca91ce943be3a;rgn=div5;view=text;node=45%3A1.0.1.1.53;idno=45;cc=ecfr>

As required by 45 CFR Part 94, the Contractor shall, at a minimum:

- a. Maintain a written, enforceable policy on conflict of interest that complies with 45 CFR Part 94 and inform each investigator of the policy, the investigator's reporting responsibilities, and the applicable regulations. The Contractor must take reasonable steps to ensure that investigators working as collaborators or subcontractors comply with the regulations.
- b. Designate an official(s) to solicit and review financial disclosure statements from each investigator participating in BARDA-funded research. Based on established guidelines consistent with the regulations, the designated official(s) must determine whether a conflict of interest exists, and if so, determine what actions should be taken to manage, reduce, or eliminate such conflict. A conflict of interest exists when the designated official(s) reasonably determines that a *Significant Financial Interest* could directly and significantly affect the design, conduct, or reporting of the BARDA-funded research. The Contractor may require the management of other conflicting financial interests in addition to those described in this paragraph, as it deems appropriate. Examples of conditions or restrictions that might be imposed to manage actual or potential conflicts of interests are included in 45 CFR Part 94, under Management of Conflicting Interests.
- c. Require all financial disclosures to be updated during the period of the award, either on an annual basis or as new reportable Significant Financial Interests are obtained.
- d. Maintain records, identifiable to each award, of all financial disclosures and all actions taken by the Contractor with respect to each conflicting interest 3 years after final payment or, where applicable, for the other time periods specified in 48 CFR Part 4, subpart 4.7, Contract Records Retention.
- e. Establish adequate enforcement mechanisms and provide for sanctions where appropriate.

If a conflict of interest is identified, the Contractor shall report to the Contracting Officer the existence of the conflicting interest found. This report shall be made and the conflicting interest managed, reduced, or eliminated, at least on a temporary basis, within sixty (60) days of that identification.

If the failure of an investigator to comply with the conflict of interest policy has biased the design, conduct, or reporting of the BARDA-funded research, the Contractor must promptly notify the Contracting Officer of the corrective action taken or to be taken. The Contracting Officer will take appropriate action or refer the matter to the Contractor for further action which may include directions to the Contractor on how to maintain appropriate objectivity in the funded research.

The Contracting Officer may at any time inquire into the Contractor's procedures and actions regarding conflicts of interests in BARDA-funded research including a review of all records pertinent to compliance with 45 CFR Part 94. The Contracting Officer may require submission of the records or review them on site. On the basis of this review, the Contracting Officer may decide that a particular conflict of interest will bias the objectivity of the BARDA-funded research to such an extent that further corrective action is needed or that the Contractor has not managed, reduced, or eliminated the conflict of interest. The issuance of a Stop Work Order by the Contracting Officer may be necessary until the matter is resolved.

If the Contracting Officer determines that BARDA-funded clinical research, whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, has been designed, conducted, or reported by an investigator with a conflict of interest that was not disclosed or managed, the Contractor must require disclosure of the conflict of interest in each public presentation of the results of the research.

**ARTICLE H.24. QA AUDIT REPORTS**

BARDA reserves the right to participate in QA audits. Upon completion of the audit/site visit the Contractor shall provide a report capturing the findings, results and next steps in proceeding with the subcontractor. If action is requested of the subcontractor, detailed concerns for addressing areas of non-conformance to FDA regulations for GLP, GMP, or GCP guidelines, as identified in the audit report, must be provided to BARDA. The Contractor shall provide responses from the subcontractors to address these concerns and plans for corrective action execution.

- Contractor shall notify CO and COR of upcoming, ongoing, or recent audits/site visits of subcontractors as part of weekly communications
- Contractor shall notify the COR and CO within 5 business days of report completion.

**ARTICLE H.25. BARDA AUDITS**

Contractor shall accommodate periodic or ad hoc site visits by BARDA. If BARDA, the Contractor, or other parties identifies any issues during an audit, the Contractor shall capture the issues, identify potential solutions, and provide a report to BARDA.

- If issues are identified during the audit, Contractor shall submit a report to BARDA detailing the finding and corrective action(s) within 10 business days of the audit.
- COR and CO will review the report and provide a response to the Contractor with 10 business days.
- Once corrective action is completed, the Contractor will provide a final report to BARDA.

**PART II - CONTRACT CLAUSES**

**SECTION I - CONTRACT CLAUSES**

**ARTICLE I.1. GENERAL CLAUSES FOR A COST-REIMBURSEMENT RESEARCH AND DEVELOPMENT CONTRACT**

*This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically as follows: FAR Clauses at: <https://www.acquisition.gov/far/> . HHSAR Clauses at: <http://www.hhs.gov/policies/hhsar/subpart352.html> .*

a. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

<u>FAR CLAUSE NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.202-1	Jan 2012	Definitions (Over the Simplified Acquisition Threshold)
52.203-3	Apr 1984	Gratuities (Over the Simplified Acquisition Threshold)
52.203-5	Apr 1984	Covenant Against Contingent Fees (Over the Simplified Acquisition Threshold)
52.203-6	Sep 2006	Restrictions on Subcontractor Sales to the Government (Over the Simplified Acquisition Threshold)
52.203-7	Oct 2010	Anti-Kickback Procedures (Over the Simplified Acquisition Threshold)
52.203-8	Jan 1997	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Over the Simplified Acquisition Threshold)
52.203-10	Jan 1997	Price or Fee Adjustment for Illegal or Improper Activity (Over the Simplified Acquisition Threshold)
52.203-12	Oct 2010	Limitation on Payments to Influence Certain Federal Transactions (Over \$150,000)

<u>FAR CLAUSE NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.204-4	May 2011	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper(Over the Simplified Acquisition Threshold)
52.204-7	Feb 2012	Central Contractor Registration
52.204-10	Feb 2012	Reporting Executive Compensation and First-Tier Subcontract Awards (\$25,000 or more)
52.209-6	Dec 2010	Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Over \$30,000)
52.215-2	Oct 2010	Audit and Records - Negotiation [Note: Applies to ALL contracts funded in whole or in part with Recovery Act funds, regardless of dollar value, AND contracts over the Simplified Acquisition Threshold funded exclusively with non-Recovery Act funds.]
52.215-8	Oct 1997	Order of Precedence - Uniform Contract Format
52.215-10	Aug 2011	Price Reduction for Defective Certified Cost or Pricing Data (Over \$700,000)
52.215-12	Oct 2010	Subcontractor Cost or Pricing Data (Over \$700,000)
52.215-14	Oct 2010	Integrity of Unit Prices (Over the Simplified Acquisition Threshold)
52.215-15	Oct 2010	Pension Adjustments and Asset Reversions (Over \$700,000)
52.215-18	Jul 2005	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) other than Pensions
52.215-19	Oct 1997	Notification of Ownership Changes
52.215-21	Oct 2010	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Modifications
52.215-22	Oct 2009	Limitations on Pass-Through Charges – Identification of Subcontract Effort
52.215-23	Oct 2009	Limitations on Pass-Through Charges (Over the Simplified Acquisition Threshold)
52.216-7	Jun 2011	Allowable Cost and Payment
52.216-8	Jun 2011	Fixed Fee
52.219-8	Jan 2011	Utilization of Small Business Concerns (Over the Simplified Acquisition Threshold)
52.219-9	Jan 2011	Small Business Subcontracting Plan (Over \$650,000, \$1.5 million for Construction)
52.219-16	Jan 1999	Liquidated Damages - Subcontracting Plan (Over \$650,000, \$1.5 million for Construction)
52.222-2	Jul 1990	Payment for Overtime Premium (Over the Simplified Acquisition Threshold) (Note: The dollar amount in paragraph (a) of this clause is \$0 unless otherwise specified in the contract.)
52.222-3	Jun 2003	Convict Labor
52.222-19	Mar 2012	Child Labor – Cooperation with Authorities and Remedies
52.222-21	Feb 1999	Prohibition of Segregated Facilities
52.222-26	Mar 2007	Equal Opportunity
52.222-35	Sep 2010	Equal Opportunity for Veterans (\$100,000 or more)
52.222-36	Oct 2010	Affirmative Action for Workers with Disabilities
52.222-37	Sep 2010	Employment Reports on Veterans (\$100,000 or more)



<u>FAR CLAUSE NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.222-40	Dec 2010	<i>Notification of Employee Rights Under the National Labor Relations Act (Over the Simplified Acquisition Threshold)</i>
52.222-50	Feb 2009	<i>Combating Trafficking in Persons</i>
52.222-54	Jan 2009	<i>Employment Eligibility Verification (Over the Simplified Acquisition Threshold)</i>
52.223-6	May 2001	<i>Drug-Free Workplace</i>
52.223-18	Aug 2011	<i>Encouraging Contractor Policies to Ban Text Messaging While Driving</i>
52.225-1	Feb 2009	<i>Buy American Act - Supplies</i>
52.225-13	Jun 2008	<i>Restrictions on Certain Foreign Purchases</i>

<u>FAR CLAUSE NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.225-25	Nov 2011	<i>Prohibition on Contracting with Entities Engaging in Sanctioned Activities Related to Iran – Representation and Certification</i>
52.227-1	Dec 2007	<i>Authorization and Consent, Alternate I (Apr 1984)</i>
52.227-2	Dec 2007	<i>Notice and Assistance Regarding Patent and Copyright Infringement</i>
52.227-11	Dec 2007	<i>Patent Rights — Ownership by the Contractor (Note: In accordance with FAR 27.303(b)(2), paragraph (e) is modified to include the requirements in FAR 27.303(b)(2)(i) through (iv). The frequency of reporting in (i) is annual.</i>
52.227-14	Dec 2007	<i>Rights in Data — General</i>
52.227-16	Jun 1987	<i>Additional Data Requirements</i>
52.232-9	Apr 1984	<i>Limitation on Withholding of Payments</i>
52.232-17	Oct 2010	<i>Interest (Over the Simplified Acquisition Threshold)</i>
52.232-20	Apr 1984	<i>Limitation of Cost</i>
52.232-23	Jan 1986	<i>Assignment of Claims</i>
52.232-25	Oct 2008	<i>Prompt Payment, Alternate I (Feb 2002)</i>
52.232-33	Oct 2003	<i>Payment by Electronic Funds Transfer—Central Contractor Registration</i>
52.233-1	Jul 2002	<i>Disputes</i>
52.233-2	Sep 2006	<i>Service of Protest</i>
52.233-3	Aug 1996	<i>Protest After Award, Alternate I (Jun 1985)</i>
52.233-4	Oct 2004	<i>Applicable Law for Breach of Contract Claim</i>
52.242-1	Apr 1984	<i>Notice of Intent to Disallow Costs</i>
52.242-3	May 2001	<i>Penalties for Unallowable Costs (Over \$700,000)</i>
52.242-4	Jan 1997	<i>Certification of Final Indirect Costs</i>
52.242-13	Jul 1995	<i>Bankruptcy (Over the Simplified Acquisition Threshold)</i>
52.242-15	Aug 1989	<i>Stop Work Order</i>
52.243-2	Aug 1987	<i>Changes - Cost Reimbursement, Alternate V (Apr 1984)</i>
52.244-2	Oct 2010	<i>Subcontracts (Over the Simplified Acquisition Threshold), Alternate I (June 2007)</i>
52.244-5	Dec 1996	<i>Competition in Subcontracting (Over the Simplified Acquisition Threshold)</i>
52.244-6	Dec 2010	<i>Subcontracts for Commercial Items</i>
52.245-1	Apr 2012	<i>Government Property</i>
52.245-9	Apr 2012	<i>Use and Charges</i>
52.246-9	Apr 1984	<i>Inspection of Research and Development (Short Form)</i>
52.246-23	Feb 1997	<i>Limitation of Liability (Over the Simplified Acquisition Threshold)</i>
52.247-34	Nov 1991	<i>FOB Destination</i>
52.247-63	Jun 2003	<i>Preference for US Flag Air Carriers</i>
52.249-6	May 2004	<i>Termination (Cost-Reimbursement)</i>
52.249-14	Apr 1984	<i>Excusable Delays</i>
52.251-1	Apr 2012	<i>Government Supply Sources</i>
52.253-1	Jan 1991	<i>Computer Generated Forms</i>

*b. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES:*

<u>HHSAR CLAUSE NO.</u>	<u>DATE</u>	<u>TITLE</u>
352.201-70	Jan 2006	Paperwork Reduction Act
352.202-1	Jan 2006	Definitions - with Alternate paragraph (h) (Jan 2006)
352.203-70	Mar 2012	Anti-Lobbying
352.216-70	Jan 2006	Additional Cost Principles
352.222-70	Jan 2010	Contractor Cooperation in Equal Employment Opportunity Investigations
352.223-70	Jan 2006	Safety and Health
352.224-70	Jan 2006	Privacy Act
352.227-70	Jan 2006	Publications and Publicity
352.228-7	Dec 1991	Insurance – Liability to Third Persons
352.231-71	Jan 2001	Pricing of Adjustments
352.233-71	Jan 2006	Litigation and Claims
352.242-70	Jan 2006	Key Personnel
352.242-73	Jan 2006	Withholding of Contract Payments
352.242-74	Apr 1984	Final Decisions on Audit Findings
352.270-4	Jan 2006	Protection of Human Subjects
352.270-6	Jan 2006	Restrictions on Use of Human Subjects

*[End of GENERAL CLAUSES FOR A NEGOTIATED COST-REIMBURSEMENT RESEARCH AND DEVELOPMENT CONTRACT- Rev. 05/2012].*

**ARTICLE I.2. ADDITIONAL FAR CONTRACT CLAUSES INCLUDED IN FULL TEXT**

This contract incorporates the following clauses in full text.

FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

a. FAR Clause 52.217-9, Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days after the Government has completed its analysis of the deliverables associated with the applicable GO/NO GO Decision gate; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

b. FAR Clause 51.219-1 Small Business Program Representations (Apr 2012)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 325411.

(2) The small business size standard is 750 employees.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.*

(1) The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, for general statistical purposes, that it  is,  is not, a small disadvantaged business concern as defined in

13 CFR 124.1002.

(3) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (b)(3) of this provision.]* The offeror represents as part of its offer that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (b)(4) of this provision.]* The offeror represents as part of its offer that--

(i) It  is,  is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. *[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(6) of this provision.] The offeror represents as part of its offer that is  is,  is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that –

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It  is,  is not a HUBZone joint venture that complies with the

requirements of 13 CFR part 126, and the representation in paragraph (b)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_ \_ .] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(c) *Definitions.* As used in this provision--

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program. “Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service- disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern,” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern," means a small business concern --

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127)," means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran- owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of 52.219-1)

c. FAR Clause 52.219-28, Post-Award Small Business Program Representation (April 2009).

(a) *Definitions* . As used in this clause--

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, which is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business

concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall represent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts--

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall represent its size status in accordance with the size standard in effect at the time of this representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/contractingopportunities/officials/size/index.html> .

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its

representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following representation and submit it to the contracting office, along with the contract number and the date on which the representation was completed:

**The Contractor represents that it [X] is, [ ] is not a small business concern under NAICS Code assigned to contract number.**

- b. FAR 52.232-99 Providing Accelerated Payment to Small Business Subcontractors (DEVIATION) (AUG 2012)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts, with small business concerns.

(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

## **PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

### **SECTION J - LIST OF ATTACHMENTS**

The following documents are attached and incorporated in this contract:

**1. Statement of Work**

Statement of Work, dated 28 September 2012.

**2. Invoice/Financing Request Instructions and Contract Financial Reporting Instructions for BARDA Cost-Reimbursement Type Contracts,**

Invoice/Financing Request Instructions and Contract Financial Reporting Instructions for BARDA Cost-Reimbursement Type Contracts, 5 pages.

**3. Financial Report of Individual Project/Contract, 1 page**

**4. Instructions for Completing Financial Report of Individual Project/Contract, 3 pages**

**5. Inclusion Enrollment Report**

Inclusion Enrollment Report, 5/01 (Modified OAMP: 10/01), 1 page.

**6. Research Patient Care Costs**

Research Patient Care Costs, 1 page.

**7. Report of Government Owned, Contractor Held Property**

Report of Government Owned, Contractor Held Property, 1 page. Located at: <http://rcb.cancer.gov/rcb-internet/forms/Govt-Owned-Prop.pdf> (Not Attached)

**8. Contractor Performance Metrics Reporting**



## **PART IV - REPRESENTATIONS AND INSTRUCTIONS**

### **SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS**

The following documents are incorporated by reference in this contract:

- 1) Annual Representations and Certifications completed on the System for Award Management (SAM) website.
- 2) Human Subjects Assurance Identification Numbers:  
Cytori Therapeutics, Inc.: FWA00007108
- 3) Animal Welfare Assurance Numbers (OLAW/PHS):  
Lovelace Respiratory Research Institute: A3083-01

## FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS FIRST AMENDMENT to Loan and Security Agreement (this "**Amendment**") is made effective as of September 20, 2017 (the "**Amendment Date**") and made, by and among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (in its individual capacity, "**Oxford**"; and in its capacity as Collateral Agent, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 thereof from time to time including Oxford in its capacity as a Lender (each a "**Lender**" and collectively, the "**Lenders**") and CYTORI THERAPEUTICS, INC., a Delaware corporation with offices located at 3020 Callan Road, San Diego, CA 92121 ("**Borrower**").

WHEREAS, Collateral Agent, Borrower and Lenders party thereto from time to time have entered into that certain Loan and Security Agreement, dated as of May 29, 2015 (as amended, supplemented or otherwise modified from time to time, the "**Loan Agreement**") pursuant to which Lenders have provided to Borrower certain loans in accordance with the terms and conditions thereof; and

WHEREAS, Borrower, Lenders and Collateral Agent desire to amend certain provisions of the Loan Agreement as provided herein and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower, Lenders and Collateral Agent hereby agree as follows:

1. Capitalized terms used herein but not otherwise defined shall have the respective meanings given to them in the Loan Agreement.
2. Borrower hereby reaffirms the security interest granted by Borrower previously in Section 4.1 of the of the Agreement with respect to the Collateral (as defined herein) and hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, such part of the Collateral that was not pledged previously or in which security interest was not granted previously, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Furthermore, Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Intellectual Property of Borrower that was not part of the Collateral on the Effective Date but is being made part of the Collateral as of the date hereof, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents.
3. Section 2.2(b) of the Loan Agreement is hereby amended and restated in its entirety as follows:

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive monthly payments of principal (except that no payments of principal shall be made on the Payment Dates from September 1, 2017 through December 1, 2017; provided, further, that upon the occurrence of the I/O Extension Event payments of principal shall also not be made on the Payment Dates from January 1, 2018 through August 1, 2018) and applicable interest (regardless of whether or not on any given Payment Date a principal payment is due hereunder), in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty (30) months (except that as set forth above, no payments of principal shall be made on the Payment Dates from

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September 1, 2017 through December 1, 2017; provided, further, that upon the occurrence of the I/O Extension Event payments of principal shall also not be made on the Payment Dates from January 1, 2018 through August 1, 2018). The principal payments due hereunder shall be as set forth on the amortization table (as amended from time to time) attached to the Disbursement Letter entered into on the Effective Date. The Final Payment and all unpaid principal and accrued and unpaid interest with respect to each Term Loan are due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

4. Section 2.5 of the Loan Agreement is hereby amended by deleting the word “and” immediately following Section 2.5(c), replacing “.” at the end of Section 2.5(d) with “; and” and adding Section 2.5(e) thereto as follows:

(e) First Amendment Fee. A fully earned and non-refundable amendment fee in the amount of Twenty Five Thousand Dollars (\$25,000.00) which shall become due and payable upon the earlier of: (i) the Maturity Date, (ii) the acceleration of any Term Loan, or (iii) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d).

5. Section 5.2(d) of the Loan Agreement is hereby amended and restated as follows:

Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own other than licenses permitted hereunder, free and clear of all Liens other than Permitted Liens. (i) Each of Borrower’s and its Subsidiaries’ Copyrights, Trademarks and issued Patents are valid and enforceable and no part of Borrower’s or its Subsidiaries’ Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (ii) to the best of Borrower’s knowledge, no claim has been made that any part of the Intellectual Property or any practice by Borrower or its Subsidiaries violates the rights of any third party except to the extent such claim could not reasonably be expected to have a Material Adverse Change. Except as noted on the Perfection Certificates or as otherwise provided in writing to Collateral Agent pursuant to this Agreement and consented to by Collateral Agent and the Required Lenders, to the extent that such consent is required pursuant to this Agreement, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower’s or such Subsidiaries’ interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent’s or any Lender’s right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than Permitted Licenses and over the counter software that is commercially available to the public).

6. Section 6.2(a)(vii) of the Loan Agreement is hereby amended and restated in its entirety as follows:

prompt notice of (A) any material change in the composition of the Intellectual Property, (B) the registration of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries in or to any copyright, patent or trademark, including a copy of any such registration within 15 days of such registration, and (C) any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

7. Section 6.7 of the Loan Agreement is hereby amended and restated in its entirety as follows:

Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower’s business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property of which Borrower becomes aware; and (c) not allow any Intellectual Property material to Borrower’s business to be abandoned, forfeited or dedicated to the public without Collateral Agent’s prior written consent. If Borrower or any of its Subsidiaries (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the

foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then Borrower or such Subsidiary shall provide prompt notice thereof to Collateral Agent and each Lender and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such property. If Borrower or any of its Subsidiaries decides to register any copyrights or mask works in the United States Copyright Office, Borrower or such Subsidiary shall: (x) provide Collateral Agent and each Lender with at least fifteen (15) days prior written notice of Borrower's or such Subsidiary's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. Borrower or such Subsidiary shall promptly provide to Collateral Agent and each Lender with evidence of the recording of such intellectual property security agreement necessary for Collateral Agent to perfect and maintain a first priority perfected security interest in such property.

8. Section 6.10 of the Loan Agreement is hereby amended and restated in its entirety as follows:

Borrower shall at all times maintain unrestricted cash and/or Cash Equivalents in a minimum aggregate amount of \$1,500,000.00.

9. Section 13.1 of the Loan Agreement is hereby amended by adding the following definitions thereto in alphabetical order:

**"Cash Burn"** means, with respect to Borrower and its consolidated Subsidiaries, as of any date of determination, an amount equal to the greater of the average monthly net change in the total cash and Cash Equivalents balance (excluding any positive cash flow resulting from Borrower's financing activities) for (i) the immediately preceding six (6) month period, or (ii) the following twelve (12) month period based on the most recent projections provided to, and approved by, Collateral Agent and Lender.

**"I/O Extension Event"** is the receipt by Borrower on or after September 1, 2017 and on or before December 29, 2017 of unrestricted net cash proceeds of not less than Five Million Dollars (\$5,000,000.00).

**"IP Agreement"** is that certain Intellectual Property Security Agreement entered into by and between Borrower and Collateral Agent dated as of September 20, 2017, as such agreement may be amended from time to time.

**"IP Release Event"** shall be deemed to have occurred at the end of any given fiscal month of Borrower if, at the end of such fiscal month, (i) the aggregate outstanding principal amount of the Term Loans is equal to or less than Three Million Dollars (\$3,000,000.00) and (ii) the aggregate amount of cash and Cash Equivalents of Borrower that is maintained in Collateral Accounts maintained in accordance with Section 6.6 hereof is equal to or greater than twelve (12) times the Cash Burn as determined at the end of such month plus the minimum cash balance required under Section 6.10 hereof.

10. Section 13.1 of the Loan Agreement is hereby further amended by amending and restating the following definitions therein as follows:

**"Amortization Date"** is January 1, 2017.

**"Loan Documents"** are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, the Post Closing Letter, the IP Agreement, the Pledge Agreement, any subordination agreements, any note, or notes or Guaranties executed by Borrower or any

other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Permitted Licenses**” are (A) licenses of over-the-counter software that is commercially available to the public, (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, (C) licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries that were entered into prior to September 20, 2017 and complied with the applicable provisions of this Agreement as in effect immediately prior to September 20, 2017; and (D) licenses under which Borrower or a Subsidiary is the licensee that are disclosed on the Perfection Certificate or are otherwise immaterial to the business of Borrower and its Subsidiaries, taken as a whole.

11. Section 13.1 of the Loan Agreement is hereby further amended by amending and restating clause (j) of the definition of “**Permitted Investments**” therein as follows:
  - (j) Intentionally Left Blank.
12. Exhibit A to the Loan Agreement is hereby amended and restated in its entirety as set forth on Exhibit A hereto.
13. The amortization table attached as Exhibit A to the Disbursement Letter entered into on the Effective Date, is hereby amended and restated as set forth on Exhibit B hereto.
14. Lenders and Collateral Agent hereby agree with Borrower that upon occurrence of the IP Release Event at the end of Borrower’s then most recently concluded fiscal month and the receipt of evidence thereof by Collateral Agent (which evidence must be reasonably acceptable to Collateral Agent), if no Event of Default has occurred and is continuing at the applicable time, the parties shall, at the Borrower’s sole expense, enter into an appropriate amendment to the Loan Agreement (which amendment must be in such form and substance as are reasonably acceptable to the Lenders and Collateral Agent) and such other documents as may be necessary to release the security interest granted hereunder in the Intellectual Property of Borrower and to undo the amendments to the Loan Agreement made by Sections 5, 6, 7 and 12 of this Amendment.
15. Limitation of Amendment.
  - a. The amendments set forth above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right, remedy or obligation which Lenders or Borrower may now have or may have in the future under or in connection with any Loan Document, as amended hereby.
  - b. This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.
16. To induce Collateral Agent and Lenders to enter into this Amendment, Borrower hereby represents and warrants to Collateral Agent and Lenders as follows:
  - a. Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

- b. Set forth on Exhibit C hereto is a complete and current list of Borrower's Intellectual Property;
  - c. Borrower has the power and due authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;
  - d. The organizational documents of Borrower delivered to Collateral Agent on the Effective Date, and updated pursuant to subsequent deliveries by the Borrower to the Collateral Agent, remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect; The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (i) any material law or regulation binding on or affecting Borrower, (ii) any material contractual restriction with a Person binding on Borrower, (iii) any material order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (iv) the organizational documents of Borrower;
  - e. The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and
  - f. This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.
17. Except as expressly set forth herein, the Loan Agreement shall continue in full force and effect without alteration or amendment. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements.
18. This Amendment shall be deemed effective as of the Amendment Date upon (a) the due execution and delivery to Collateral Agent of this Amendment by each party hereto, (b) the due execution and delivery to Collateral Agent of the IP Agreement by each party thereto and (c) Borrower's payment of all Lenders' Expenses incurred through the date hereof, which may be debited from any of Borrower's accounts.
19. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.
20. This Amendment and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

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**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to Loan and Security Agreement to be executed as of the date first set forth above.

**BORROWER:**

CYTORI THERAPEUTICS, INC.

By /s/ Tiago M. Girao

Name: Tiago M. Girao

Title: VP of Finance and Chief Financial  
Officer

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By /s/ Colette H. Featherly

Name: Colette H. Featherly

Title: Senior Vice President

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## Exhibit A

### Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) more than 65% of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary; (ii) any intent-to-use trademark or service mark, and (iii) any license, instrument or contract, and the property subject to such license, instrument or contract, in each case if the granting of a Lien in such license, instrument, contract or property is prohibited by or would constitute a default or termination, or would require a consent, under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license, instrument, contract or property, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral."

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**Exhibit B**

**Amortization Table**

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## Oxford Finance LLC

### Amortization Table

#### Cytori L5 AA01

PMT No.	Payment Date	Beginning Balance	Monthly Payment	Interest	Principal	Ending Balance
	6/1/15					\$17,700,000.00
			Interim Interest Due			
1	7/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
2	8/1/15	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
3	9/1/15	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
4	10/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
5	11/1/15	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
6	12/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
7	1/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
8	2/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
9	3/1/16	\$17,700,000.00	\$127,612.08	\$127,612.08	\$0.00	\$17,700,000.00
10	4/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
11	5/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
12	6/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
13	7/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
14	8/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
15	9/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
16	10/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
17	11/1/16	\$17,700,000.00	\$136,412.92	\$136,412.92	\$0.00	\$17,700,000.00
18	12/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
19	1/1/17	\$17,700,000.00	\$726,412.92	\$136,412.92	\$590,000.00	\$17,110,000.00
20	2/1/17	\$17,110,000.00	\$721,865.82	\$131,865.82	\$590,000.00	\$16,520,000.00
21	3/1/17	\$16,520,000.00	\$704,997.56	\$114,997.56	\$590,000.00	\$15,930,000.00
22	4/1/17	\$15,930,000.00	\$712,771.63	\$122,771.63	\$590,000.00	\$15,340,000.00
23	5/1/17	\$15,340,000.00	\$704,410.83	\$114,410.83	\$590,000.00	\$14,750,000.00
24	6/1/17	\$14,750,000.00	\$703,677.43	\$113,677.43	\$590,000.00	\$14,160,000.00
25	7/1/17	\$14,160,000.00	\$695,610.00	\$105,610.00	\$590,000.00	\$13,570,000.00
26	8/1/17	\$13,570,000.00	\$694,583.24	\$104,583.24	\$590,000.00	\$12,980,000.00
27	9/1/17	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
28	10/1/17	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
29	11/1/17	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
30	12/1/17	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
31	1/1/18	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
32	2/1/18	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
33	3/1/18	\$12,980,000.00	\$90,355.22	\$90,355.22	\$0.00	\$12,980,000.00
34	4/1/18	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
35	5/1/18	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
36	6/1/18	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
37	7/1/18	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
38	8/1/18	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
39	9/1/18	\$12,980,000.00	\$1,398,036.14	\$100,036.14	\$1,298,000.00	\$11,682,000.00
40	10/1/18	\$11,682,000.00	\$1,385,128.25	\$87,128.25	\$1,298,000.00	\$10,384,000.00
41	11/1/18	\$10,384,000.00	\$1,378,028.91	\$80,028.91	\$1,298,000.00	\$9,086,000.00
42	12/1/18	\$9,086,000.00	\$1,365,766.42	\$67,766.42	\$1,298,000.00	\$7,788,000.00
43	1/1/19	\$7,788,000.00	\$1,358,021.68	\$60,021.68	\$1,298,000.00	\$6,490,000.00
44	2/1/19	\$6,490,000.00	\$1,348,018.07	\$50,018.07	\$1,298,000.00	\$5,192,000.00
45	3/1/19	\$5,192,000.00	\$1,334,142.09	\$36,142.09	\$1,298,000.00	\$3,894,000.00
46	4/1/19	\$3,894,000.00	\$1,328,010.84	\$30,010.84	\$1,298,000.00	\$2,596,000.00
47	5/1/19	\$2,596,000.00	\$1,317,361.83	\$19,361.83	\$1,298,000.00	\$1,298,000.00
48	6/1/19	\$1,298,000.00	\$1,308,003.61	\$10,003.61	\$1,298,000.00	\$0.00
Final	6/1/19	Final Payment	\$1,088,550.00	\$1,088,550.00	\$0.00	
		<b>Totals</b>	<b>\$23,867,070.88</b>	<b>\$6,167,070.88</b>	<b>\$17,700,000.00</b>	

**Oxford Finance LLC**

**Amortization Table**

**Cytori L5 AA01a**

**OF ID: 215033**

<b>Start Date:</b>	5/29/2015			<b>Disclaimer:</b>		
<b>Interest Rate:</b>	8.95%			THIS IS A STANDARD AMORTIZATION SCHEDULE. IT IS NOT INTENDED TO BE USED FOR PAYOFF PURPOSES.		
<b>Term:</b>	48	18 IO + 30 PI				
<b>Payment:</b>	Varies					
<b>Final Payment Amount:</b>	\$430,500.00	6.15%				
<b>Interim Interest Days:</b>	3					
<b>Interim Interest:</b>	\$5,220.83					
<b>PMT No.</b>	<b>Payment Date</b>	<b>Beginning Balance</b>	<b>Monthly Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Ending Balance</b>
	6/1/15					
			Interim Interest Due			\$7,000,000.00
1	7/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
2	8/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
3	9/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
4	10/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
5	11/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
6	12/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
7	1/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
8	2/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
9	3/1/16	\$7,000,000.00	\$50,468.08	\$50,468.08	\$0.00	\$7,000,000.00
10	4/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
11	5/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
12	6/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
13	7/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
14	8/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
15	9/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
16	10/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
17	11/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
18	12/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
19	1/1/17	\$7,000,000.00	\$287,281.94	\$53,948.61	\$233,333.33	\$6,766,666.67
20	2/1/17	\$6,766,666.67	\$285,483.66	\$52,150.32	\$233,333.33	\$6,533,333.33
21	3/1/17	\$6,533,333.33	\$278,812.59	\$46,479.26	\$233,333.33	\$6,300,000.00
22	4/1/17	\$6,300,000.00	\$281,887.08	\$48,553.75	\$233,333.33	\$6,066,666.67
23	5/1/17	\$6,066,666.67	\$278,580.56	\$46,247.22	\$233,333.33	\$5,833,333.33
24	6/1/17	\$5,833,333.33	\$278,290.51	\$44,957.18	\$233,333.33	\$5,600,000.00
25	7/1/17	\$5,600,000.00	\$275,100.00	\$41,766.67	\$233,333.33	\$5,366,666.67
26	8/1/17	\$5,366,666.67	\$274,693.94	\$41,360.60	\$233,333.33	\$5,133,333.33
27	9/1/17	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
28	10/1/17	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
29	11/1/17	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
30	12/1/17	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
31	1/1/18	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
32	2/1/18	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
33	3/1/18	\$5,133,333.33	\$35,733.70	\$35,733.70	\$0.00	\$5,133,333.33
34	4/1/18	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
35	5/1/18	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
36	6/1/18	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
37	7/1/18	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
38	8/1/18	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
39	9/1/18	\$5,133,333.33	\$562,895.65	\$39,562.31	\$513,333.33	\$4,620,000.00
40	10/1/18	\$4,620,000.00	\$547,790.83	\$34,457.50	\$513,333.33	\$4,106,666.67
41	11/1/18	\$4,106,666.67	\$544,983.19	\$31,649.85	\$513,333.33	\$3,593,333.33
42	12/1/18	\$3,593,333.33	\$540,133.61	\$28,800.28	\$513,333.33	\$3,080,000.00
43	1/1/19	\$3,080,000.00	\$537,070.72	\$23,737.39	\$513,333.33	\$2,566,666.67
44	2/1/19	\$2,566,666.67	\$533,114.49	\$19,781.16	\$513,333.33	\$2,053,333.33
45	3/1/19	\$2,053,333.33	\$527,626.81	\$14,293.48	\$513,333.33	\$1,540,000.00
46	4/1/19	\$1,540,000.00	\$525,202.03	\$11,868.69	\$513,333.33	\$1,026,666.67
47	5/1/19	\$1,026,666.67	\$520,990.56	\$7,657.22	\$513,333.33	\$513,333.33
48	6/1/19	\$513,333.33	\$517,289.56	\$3,956.23	\$513,333.33	\$0.00
<b>Final</b>	6/1/19	<b>Final Payment</b>	\$430,500.00	\$430,500.00	\$0.00	
		<b>Totals</b>	\$9,438,954.58	\$2,438,954.58	\$7,000,000.00	

**Oxford Finance LLC**

**Amortization Table**

**Cytori L5 AA01b**

**OF ID: 215034**

Start Date:	5/29/2015	Disclaimer:					
Interest Rate:	8.95%	THIS IS A STANDARD AMORTIZATION					
Term:	48	18 IO + 30 PI	SCHEDULE. IT IS NOT INTENDED TO BE				
Payment:	Varies	USED FOR PAYOFF PURPOSES.					
Final Payment Amount:	\$381,300.00	6.15%					
Interim Interest Days:	3						
Interim Interest:	\$4,824.17						
<b>PMT No.</b>	<b>Payment Date</b>	<b>Beginning Balance</b>	<b>Monthly Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Ending Balance</b>	
	6/1/15		Interim Interest Due				\$8,200,000.00
1	7/1/15	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
2	8/1/15	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
3	9/1/15	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
4	10/1/15	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
5	11/1/15	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
6	12/1/15	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
7	1/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
8	2/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
9	3/1/16	\$8,200,000.00	\$44,700.28	\$44,700.28	\$0.00	\$8,200,000.00	
10	4/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
11	5/1/16	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
12	6/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
13	7/1/16	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
14	8/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
15	9/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
16	10/1/16	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
17	11/1/16	\$8,200,000.00	\$47,783.08	\$47,783.08	\$0.00	\$8,200,000.00	
18	12/1/16	\$8,200,000.00	\$48,241.67	\$48,241.67	\$0.00	\$8,200,000.00	
19	1/1/17	\$8,200,000.00	\$254,449.72	\$47,783.08	\$208,666.67	\$5,993,333.33	
20	2/1/17	\$5,993,333.33	\$252,866.96	\$48,190.29	\$206,666.67	\$5,786,666.67	
21	3/1/17	\$5,786,666.67	\$248,948.30	\$40,281.83	\$208,666.67	\$5,580,000.00	
22	4/1/17	\$5,580,000.00	\$249,671.42	\$43,004.75	\$208,666.67	\$5,373,333.33	
23	5/1/17	\$5,373,333.33	\$246,742.78	\$40,078.11	\$208,666.67	\$5,168,666.67	
24	6/1/17	\$5,168,666.67	\$248,485.88	\$39,819.21	\$208,666.67	\$4,960,000.00	
25	7/1/17	\$4,960,000.00	\$243,680.00	\$38,993.33	\$208,666.67	\$4,753,333.33	
26	8/1/17	\$4,753,333.33	\$243,300.34	\$38,633.68	\$208,666.67	\$4,548,666.67	
27	9/1/17	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
28	10/1/17	\$4,548,666.67	\$33,910.58	\$33,910.58	\$0.00	\$4,548,666.67	
29	11/1/17	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
30	12/1/17	\$4,548,666.67	\$33,910.58	\$33,910.58	\$0.00	\$4,548,666.67	
31	1/1/18	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
32	2/1/18	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
33	3/1/18	\$4,548,666.67	\$31,649.85	\$31,649.85	\$0.00	\$4,548,666.67	
34	4/1/18	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
35	5/1/18	\$4,548,666.67	\$33,910.58	\$33,910.58	\$0.00	\$4,548,666.67	
36	6/1/18	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
37	7/1/18	\$4,548,666.67	\$33,910.58	\$33,910.58	\$0.00	\$4,548,666.67	
38	8/1/18	\$4,548,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,548,666.67	
39	9/1/18	\$4,548,666.67	\$489,707.57	\$35,040.91	\$454,666.67	\$4,092,000.00	
40	10/1/18	\$4,092,000.00	\$485,188.17	\$30,519.50	\$454,666.67	\$3,637,333.33	
41	11/1/18	\$3,637,333.33	\$482,699.39	\$28,032.73	\$454,666.67	\$3,182,666.67	
42	12/1/18	\$3,182,666.67	\$478,404.08	\$23,737.39	\$454,666.67	\$2,728,000.00	
43	1/1/19	\$2,728,000.00	\$475,691.21	\$21,024.54	\$454,666.67	\$2,273,333.33	
44	2/1/19	\$2,273,333.33	\$472,187.12	\$17,520.45	\$454,666.67	\$1,818,666.67	
45	3/1/19	\$1,818,666.67	\$467,326.61	\$12,859.94	\$454,666.67	\$1,364,000.00	
46	4/1/19	\$1,364,000.00	\$465,178.94	\$10,512.27	\$454,666.67	\$909,333.33	
47	5/1/19	\$909,333.33	\$461,448.78	\$8,782.11	\$454,666.67	\$454,666.67	
48	6/1/19	\$454,666.67	\$458,170.78	\$3,504.09	\$454,666.67	(\$0.00)	
Final	6/1/19	Final Payment	\$381,300.00	\$381,300.00	\$0.00		
		<b>Totals</b>	<b>\$8,360,216.92</b>	<b>\$2,160,216.92</b>	<b>\$8,200,000.00</b>		



# Oxford Finance LLC

## Amortization Table

**Cytori L5 AA01c**

**OF ID: 215035**

	Start Date:	5/29/2015	
	Interest Rate:	8.95%	<i>Disclaimer:</i>
	Term:	48	18 IO + 30 PI
	Payment:	Varies	THIS IS A STANDARD AMORTIZATION SCHEDULE. IT IS NOT INTENDED TO BE USED FOR PAYOFF PURPOSES.
	Final Payment Amount:	\$278,750.00	6.15%
	Interim Interest Days:	3	
	Interim Interest:	\$3,366.25	

  

PMT No.	Payment Date	Beginning Balance	Monthly Payment	Interest	Principal	Ending Balance
	6/1/15					\$4,500,000.00
						Interim Interest Due
1	7/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
2	8/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
3	9/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
4	10/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
5	11/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
6	12/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
7	1/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
8	2/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
9	3/1/16	\$4,500,000.00	\$32,443.75	\$32,443.75	\$0.00	\$4,500,000.00
10	4/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
11	5/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
12	6/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
13	7/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
14	8/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
15	9/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
16	10/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
17	11/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
18	12/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
19	1/1/17	\$4,500,000.00	\$184,681.25	\$34,681.25	\$150,000.00	\$4,350,000.00
20	2/1/17	\$4,350,000.00	\$183,525.21	\$33,525.21	\$150,000.00	\$4,200,000.00
21	3/1/17	\$4,200,000.00	\$179,236.67	\$29,236.67	\$150,000.00	\$4,050,000.00
22	4/1/17	\$4,050,000.00	\$181,213.13	\$31,213.13	\$150,000.00	\$3,900,000.00
23	5/1/17	\$3,900,000.00	\$179,087.50	\$29,087.50	\$150,000.00	\$3,750,000.00
24	6/1/17	\$3,750,000.00	\$178,901.04	\$28,901.04	\$150,000.00	\$3,600,000.00
25	7/1/17	\$3,600,000.00	\$178,850.00	\$28,850.00	\$150,000.00	\$3,450,000.00
26	8/1/17	\$3,450,000.00	\$178,588.96	\$28,588.96	\$150,000.00	\$3,300,000.00
27	9/1/17	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
28	10/1/17	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
29	11/1/17	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
30	12/1/17	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
31	1/1/18	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
32	2/1/18	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
33	3/1/18	\$3,300,000.00	\$22,971.67	\$22,971.67	\$0.00	\$3,300,000.00
34	4/1/18	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
35	5/1/18	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
36	6/1/18	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
37	7/1/18	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
38	8/1/18	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
39	9/1/18	\$3,300,000.00	\$365,432.92	\$25,432.92	\$330,000.00	\$2,970,000.00
40	10/1/18	\$2,970,000.00	\$362,151.25	\$22,151.25	\$330,000.00	\$2,640,000.00
41	11/1/18	\$2,640,000.00	\$360,346.33	\$20,346.33	\$330,000.00	\$2,310,000.00
42	12/1/18	\$2,310,000.00	\$347,228.75	\$17,228.75	\$330,000.00	\$1,980,000.00
43	1/1/19	\$1,980,000.00	\$345,259.75	\$15,259.75	\$330,000.00	\$1,650,000.00
44	2/1/19	\$1,650,000.00	\$342,716.46	\$12,716.46	\$330,000.00	\$1,320,000.00
45	3/1/19	\$1,320,000.00	\$339,188.67	\$9,188.67	\$330,000.00	\$990,000.00
46	4/1/19	\$990,000.00	\$337,629.88	\$7,629.88	\$330,000.00	\$660,000.00
47	5/1/19	\$660,000.00	\$334,922.50	\$4,922.50	\$330,000.00	\$330,000.00
48	6/1/19	\$330,000.00	\$332,543.29	\$2,543.29	\$330,000.00	\$0.00
Final	6/1/19	Final Payment	\$278,750.00	\$278,750.00	\$0.00	
		<b>Totals</b>	<b>\$8,067,899.38</b>	<b>\$1,567,899.38</b>	<b>\$4,500,000.00</b>	

## Oxford Finance LLC

### Amortization Table

#### Cytori L5 AA01

PMT No.	Payment Date	Beginning Balance	Monthly Payment	Interest	Principal	Ending Balance
	6/1/15					\$17,700,000.00
			Interim Interest Due			
1	7/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
2	8/1/15	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
3	9/1/15	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
4	10/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
5	11/1/15	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
6	12/1/15	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
7	1/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
8	2/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
9	3/1/16	\$17,700,000.00	\$127,612.08	\$127,612.08	\$0.00	\$17,700,000.00
10	4/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
11	5/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
12	6/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
13	7/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
14	8/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
15	9/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
16	10/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
17	11/1/16	\$17,700,000.00	\$138,412.92	\$138,412.92	\$0.00	\$17,700,000.00
18	12/1/16	\$17,700,000.00	\$132,012.50	\$132,012.50	\$0.00	\$17,700,000.00
19	1/1/17	\$17,700,000.00	\$728,412.92	\$138,412.92	\$590,000.00	\$17,110,000.00
20	2/1/17	\$17,110,000.00	\$721,866.82	\$131,866.82	\$590,000.00	\$16,520,000.00
21	3/1/17	\$16,520,000.00	\$704,997.58	\$114,997.58	\$590,000.00	\$15,930,000.00
22	4/1/17	\$15,930,000.00	\$712,771.63	\$122,771.63	\$590,000.00	\$15,340,000.00
23	5/1/17	\$15,340,000.00	\$704,410.83	\$114,410.83	\$590,000.00	\$14,750,000.00
24	6/1/17	\$14,750,000.00	\$703,677.43	\$113,677.43	\$590,000.00	\$14,160,000.00
25	7/1/17	\$14,160,000.00	\$695,610.00	\$105,610.00	\$590,000.00	\$13,570,000.00
26	8/1/17	\$13,570,000.00	\$694,583.24	\$104,583.24	\$590,000.00	\$12,980,000.00
27	9/1/17	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
28	10/1/17	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
29	11/1/17	\$12,980,000.00	\$100,036.14	\$100,036.14	\$0.00	\$12,980,000.00
30	12/1/17	\$12,980,000.00	\$96,809.17	\$96,809.17	\$0.00	\$12,980,000.00
31	1/1/18	\$12,980,000.00	\$821,147.25	\$100,036.14	\$721,111.11	\$12,258,888.89
32	2/1/18	\$12,258,888.89	\$815,589.69	\$94,478.58	\$721,111.11	\$11,537,777.78
33	3/1/18	\$11,537,777.78	\$801,426.86	\$80,315.75	\$721,111.11	\$10,816,666.67
34	4/1/18	\$10,816,666.67	\$804,474.56	\$83,383.45	\$721,111.11	\$10,095,555.56
35	5/1/18	\$10,095,555.56	\$798,407.13	\$75,298.02	\$721,111.11	\$9,374,444.44
36	6/1/18	\$9,374,444.44	\$793,369.43	\$72,248.32	\$721,111.11	\$8,653,333.33
37	7/1/18	\$8,653,333.33	\$785,660.56	\$64,539.44	\$721,111.11	\$7,932,222.22
38	8/1/18	\$7,932,222.22	\$782,244.31	\$61,133.20	\$721,111.11	\$7,211,111.11
39	9/1/18	\$7,211,111.11	\$776,688.74	\$55,575.63	\$721,111.11	\$6,490,000.00
40	10/1/18	\$6,490,000.00	\$769,515.69	\$48,404.58	\$721,111.11	\$5,768,888.89
41	11/1/18	\$5,768,888.89	\$765,571.62	\$44,460.51	\$721,111.11	\$5,047,777.78
42	12/1/18	\$5,047,777.78	\$758,759.12	\$37,648.01	\$721,111.11	\$4,326,666.67
43	1/1/19	\$4,326,666.67	\$754,466.49	\$33,345.38	\$721,111.11	\$3,605,555.56
44	2/1/19	\$3,605,555.56	\$748,898.93	\$27,787.82	\$721,111.11	\$2,884,444.44
45	3/1/19	\$2,884,444.44	\$741,190.05	\$20,078.94	\$721,111.11	\$2,163,333.33
46	4/1/19	\$2,163,333.33	\$737,783.80	\$16,672.69	\$721,111.11	\$1,442,222.22
47	5/1/19	\$1,442,222.22	\$731,867.69	\$10,758.57	\$721,111.11	\$721,111.11
48	6/1/19	\$721,111.11	\$726,688.67	\$5,557.56	\$721,111.11	(\$0.00)
Final	6/1/19	Final Payment	\$1,088,550.00	\$1,088,550.00	\$0.00	
		Totals	\$23,474,097.37	\$5,774,097.37	\$17,700,000.00	

**Oxford Finance LLC**

**Amortization Table**

**Cytori L5 AA01a**

**OF ID: 215033**

	<b>Start Date:</b>	5/29/2015		<b>Disclaimer:</b>		
	<b>Interest Rate:</b>	8.95%		THIS IS A STANDARD AMORTIZATION		
	<b>Term:</b>	48	18 IO + 30 PI	SCHEDULE. IT IS NOT INTENDED TO BE		
	<b>Payment:</b>	Varies		USED FOR PAYOFF PURPOSES.		
	<b>Final Payment:</b>	\$430,500.00	6.15%			
	<b>Amount:</b>	7,000,000.00				
	<b>Interim Interest Days:</b>	3				
	<b>Interim Interest:</b>	\$5,220.83				
<b>PMT No.</b>	<b>Payment Date</b>	<b>Beginning Balance</b>	<b>Monthly Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Ending Balance</b>
	6/1/15		Interim Interest Due			\$7,000,000.00
1	7/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
2	8/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
3	9/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
4	10/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
5	11/1/15	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
6	12/1/15	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
7	1/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
8	2/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
9	3/1/16	\$7,000,000.00	\$50,468.06	\$50,468.06	\$0.00	\$7,000,000.00
10	4/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
11	5/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
12	6/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
13	7/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
14	8/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
15	9/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
16	10/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
17	11/1/16	\$7,000,000.00	\$53,948.61	\$53,948.61	\$0.00	\$7,000,000.00
18	12/1/16	\$7,000,000.00	\$52,208.33	\$52,208.33	\$0.00	\$7,000,000.00
19	1/1/17	\$7,000,000.00	\$287,281.94	\$53,948.61	\$233,333.33	\$6,766,666.67
20	2/1/17	\$6,766,666.67	\$285,483.66	\$52,150.32	\$233,333.33	\$6,533,333.33
21	3/1/17	\$6,533,333.33	\$278,812.59	\$45,479.26	\$233,333.33	\$6,300,000.00
22	4/1/17	\$6,300,000.00	\$281,887.08	\$48,553.75	\$233,333.33	\$6,066,666.67
23	5/1/17	\$6,066,666.67	\$278,580.56	\$45,247.22	\$233,333.33	\$5,833,333.33
24	6/1/17	\$5,833,333.33	\$278,290.51	\$44,957.18	\$233,333.33	\$5,600,000.00
25	7/1/17	\$5,600,000.00	\$275,100.00	\$41,766.67	\$233,333.33	\$5,366,666.67
26	8/1/17	\$5,366,666.67	\$274,693.94	\$41,360.60	\$233,333.33	\$5,133,333.33
27	9/1/17	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
28	10/1/17	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
29	11/1/17	\$5,133,333.33	\$39,562.31	\$39,562.31	\$0.00	\$5,133,333.33
30	12/1/17	\$5,133,333.33	\$38,286.11	\$38,286.11	\$0.00	\$5,133,333.33
31	1/1/18	\$5,133,333.33	\$324,747.50	\$39,562.31	\$285,185.19	\$4,848,148.15
32	2/1/18	\$4,848,148.15	\$322,549.59	\$37,364.41	\$285,185.19	\$4,562,962.96
33	3/1/18	\$4,562,962.96	\$316,948.48	\$31,763.29	\$285,185.19	\$4,277,777.78
34	4/1/18	\$4,277,777.78	\$318,153.78	\$32,968.60	\$285,185.19	\$3,992,592.59
35	5/1/18	\$3,992,592.59	\$314,963.27	\$29,778.09	\$285,185.19	\$3,707,407.41
36	6/1/18	\$3,707,407.41	\$313,757.97	\$28,572.78	\$285,185.19	\$3,422,222.22
37	7/1/18	\$3,422,222.22	\$310,709.26	\$25,524.07	\$285,185.19	\$3,137,037.04
38	8/1/18	\$3,137,037.04	\$309,362.16	\$24,176.97	\$285,185.19	\$2,851,851.85
39	9/1/18	\$2,851,851.85	\$307,164.25	\$21,979.06	\$285,185.19	\$2,566,666.67
40	10/1/18	\$2,566,666.67	\$304,328.24	\$19,143.06	\$285,185.19	\$2,281,481.48
41	11/1/18	\$2,281,481.48	\$302,768.44	\$17,583.25	\$285,185.19	\$1,996,296.30
42	12/1/18	\$1,996,296.30	\$300,074.23	\$14,889.04	\$285,185.19	\$1,711,111.11
43	1/1/19	\$1,711,111.11	\$298,372.62	\$13,187.44	\$285,185.19	\$1,425,925.93
44	2/1/19	\$1,425,925.93	\$296,174.72	\$10,989.53	\$285,185.19	\$1,140,740.74
45	3/1/19	\$1,140,740.74	\$293,126.01	\$7,940.82	\$285,185.19	\$855,555.56
46	4/1/19	\$855,555.56	\$291,778.90	\$6,593.72	\$285,185.19	\$570,370.37
47	5/1/19	\$570,370.37	\$289,439.20	\$4,254.01	\$285,185.19	\$285,185.19
48	6/1/19	\$285,185.19	\$287,383.09	\$2,197.91	\$285,185.19	\$0.00
Final	6/1/19	Final Payment	\$430,500.00	\$430,500.00	\$0.00	
		<b>Totals</b>	\$9,283,541.33	\$2,283,541.33	\$7,000,000.00	



## Oxford Finance LLC

### Amortization Table

**Cytori L5 AA01b**

**OF ID: 215034**

PMT No.	Payment Date	Beginning Balance	Monthly Payment	Interest	Principal	Ending Balance
	6/1/15					\$6,200,000.00
			Interim Interest Due			
1	7/1/15	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
2	8/1/15	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
3	9/1/15	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
4	10/1/15	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
5	11/1/15	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
6	12/1/15	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
7	1/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
8	2/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
9	3/1/16	\$6,200,000.00	\$44,700.28	\$44,700.28	\$0.00	\$6,200,000.00
10	4/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
11	5/1/16	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
12	6/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
13	7/1/16	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
14	8/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
15	9/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
16	10/1/16	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
17	11/1/16	\$6,200,000.00	\$47,783.06	\$47,783.06	\$0.00	\$6,200,000.00
18	12/1/16	\$6,200,000.00	\$46,241.67	\$46,241.67	\$0.00	\$6,200,000.00
19	1/1/17	\$6,200,000.00	\$254,449.72	\$47,783.06	\$206,666.67	\$5,993,333.33
20	2/1/17	\$5,993,333.33	\$252,866.96	\$46,190.29	\$206,666.67	\$5,786,666.67
21	3/1/17	\$5,786,666.67	\$246,946.30	\$40,281.83	\$206,666.67	\$5,580,000.00
22	4/1/17	\$5,580,000.00	\$249,671.42	\$43,004.75	\$206,666.67	\$5,373,333.33
23	5/1/17	\$5,373,333.33	\$246,742.78	\$40,076.11	\$206,666.67	\$5,166,666.67
24	6/1/17	\$5,166,666.67	\$246,485.88	\$39,819.21	\$206,666.67	\$4,960,000.00
25	7/1/17	\$4,960,000.00	\$243,680.00	\$38,993.33	\$206,666.67	\$4,753,333.33
26	8/1/17	\$4,753,333.33	\$243,300.34	\$38,633.68	\$206,666.67	\$4,546,666.67
27	9/1/17	\$4,546,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,546,666.67
28	10/1/17	\$4,546,666.67	\$33,910.66	\$33,910.66	\$0.00	\$4,546,666.67
29	11/1/17	\$4,546,666.67	\$35,040.91	\$35,040.91	\$0.00	\$4,546,666.67
30	12/1/17	\$4,546,666.67	\$33,910.66	\$33,910.66	\$0.00	\$4,546,666.67
31	1/1/18	\$4,546,666.67	\$287,633.50	\$35,040.91	\$252,592.59	\$4,294,074.07
32	2/1/18	\$4,294,074.07	\$285,666.78	\$33,094.19	\$252,592.59	\$4,041,481.48
33	3/1/18	\$4,041,481.48	\$280,725.79	\$28,133.20	\$252,592.59	\$3,788,888.89
34	4/1/18	\$3,788,888.89	\$281,793.35	\$29,200.76	\$252,592.59	\$3,536,296.30
35	5/1/18	\$3,536,296.30	\$278,967.47	\$28,374.88	\$252,592.59	\$3,283,703.70
36	6/1/18	\$3,283,703.70	\$277,889.91	\$25,307.32	\$252,592.59	\$3,031,111.11
37	7/1/18	\$3,031,111.11	\$275,199.63	\$22,607.04	\$252,592.59	\$2,778,518.62
38	8/1/18	\$2,778,518.62	\$274,006.48	\$21,413.89	\$252,592.59	\$2,525,925.93
39	9/1/18	\$2,525,925.93	\$272,069.76	\$19,467.17	\$252,592.59	\$2,273,333.33
40	10/1/18	\$2,273,333.33	\$269,547.87	\$18,956.28	\$252,592.59	\$2,020,740.74
41	11/1/18	\$2,020,740.74	\$266,166.33	\$15,573.74	\$252,592.59	\$1,768,148.15
42	12/1/18	\$1,768,148.15	\$265,780.03	\$13,187.44	\$252,592.59	\$1,515,555.56
43	1/1/19	\$1,515,555.56	\$264,272.90	\$11,680.30	\$252,592.59	\$1,262,962.96
44	2/1/19	\$1,262,962.96	\$262,326.18	\$9,733.59	\$252,592.59	\$1,010,370.37
45	3/1/19	\$1,010,370.37	\$259,625.89	\$7,033.30	\$252,592.59	\$757,777.78
46	4/1/19	\$757,777.78	\$258,432.74	\$5,840.15	\$252,592.59	\$505,185.19
47	5/1/19	\$505,185.19	\$256,360.43	\$3,787.84	\$252,592.59	\$252,692.69
48	6/1/19	\$252,692.69	\$254,539.31	\$1,948.72	\$252,692.69	\$0.00
Final	6/1/19	Final Payment	\$381,300.00	\$381,300.00	\$0.00	
		<b>Totals</b>	<b>\$8,222,565.18</b>	<b>\$2,022,565.18</b>	<b>\$6,200,000.00</b>	



**Oxford Finance LLC**

**Amortization Table**

**Cytori L5 AA01c**

**OF ID: 215035**

<b>Start Date:</b>	5/29/2015			<b>Disclaimer:</b>		
<b>Interest Rate:</b>	8.95%			THIS IS A STANDARD AMORTIZATION SCHEDULE. IT IS NOT INTENDED TO BE USED FOR PAYOFF PURPOSES.		
<b>Term:</b>	48	18 IO + 30 PI				
<b>Payment:</b>	Varies					
<b>Final Payment Amount:</b>	\$276,750.00	6.15%				
<b>Interim Interest Days:</b>	3					
<b>Interim Interest:</b>	\$3,366.25					
<b>PMT No.</b>	<b>Payment Date</b>	<b>Beginning Balance</b>	<b>Monthly Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Ending Balance</b>
	6/1/15					\$4,500,000.00
			Interim Interest Due			
1	7/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
2	8/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
3	9/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
4	10/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
5	11/1/15	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
6	12/1/15	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
7	1/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
8	2/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
9	3/1/16	\$4,500,000.00	\$32,443.75	\$32,443.75	\$0.00	\$4,500,000.00
10	4/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
11	5/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
12	6/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
13	7/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
14	8/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
15	9/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
16	10/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
17	11/1/16	\$4,500,000.00	\$34,681.25	\$34,681.25	\$0.00	\$4,500,000.00
18	12/1/16	\$4,500,000.00	\$33,562.50	\$33,562.50	\$0.00	\$4,500,000.00
19	1/1/17	\$4,500,000.00	\$184,681.25	\$34,681.25	\$150,000.00	\$4,350,000.00
20	2/1/17	\$4,350,000.00	\$183,525.21	\$33,525.21	\$150,000.00	\$4,200,000.00
21	3/1/17	\$4,200,000.00	\$179,236.67	\$29,236.67	\$150,000.00	\$4,050,000.00
22	4/1/17	\$4,050,000.00	\$181,213.13	\$31,213.13	\$150,000.00	\$3,900,000.00
23	5/1/17	\$3,900,000.00	\$179,087.50	\$29,087.50	\$150,000.00	\$3,750,000.00
24	6/1/17	\$3,750,000.00	\$178,901.04	\$28,901.04	\$150,000.00	\$3,600,000.00
25	7/1/17	\$3,600,000.00	\$178,850.00	\$28,850.00	\$150,000.00	\$3,450,000.00
26	8/1/17	\$3,450,000.00	\$178,588.96	\$28,588.96	\$150,000.00	\$3,300,000.00
27	9/1/17	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
28	10/1/17	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
29	11/1/17	\$3,300,000.00	\$25,432.92	\$25,432.92	\$0.00	\$3,300,000.00
30	12/1/17	\$3,300,000.00	\$24,612.50	\$24,612.50	\$0.00	\$3,300,000.00
31	1/1/18	\$3,300,000.00	\$208,766.25	\$25,432.92	\$183,333.33	\$3,116,666.67
32	2/1/18	\$3,116,666.67	\$207,353.31	\$24,019.98	\$183,333.33	\$2,933,333.33
33	3/1/18	\$2,933,333.33	\$203,752.69	\$20,419.26	\$183,333.33	\$2,750,000.00
34	4/1/18	\$2,750,000.00	\$204,527.43	\$21,194.10	\$183,333.33	\$2,566,666.67
35	5/1/18	\$2,566,666.67	\$202,476.39	\$19,143.06	\$183,333.33	\$2,383,333.33
36	6/1/18	\$2,383,333.33	\$201,701.56	\$18,368.22	\$183,333.33	\$2,200,000.00
37	7/1/18	\$2,200,000.00	\$199,741.67	\$16,408.33	\$183,333.33	\$2,016,666.67
38	8/1/18	\$2,016,666.67	\$198,875.67	\$15,542.34	\$183,333.33	\$1,833,333.33
39	9/1/18	\$1,833,333.33	\$197,462.73	\$14,129.40	\$183,333.33	\$1,650,000.00
40	10/1/18	\$1,650,000.00	\$195,639.58	\$12,306.25	\$183,333.33	\$1,466,666.67
41	11/1/18	\$1,466,666.67	\$194,636.86	\$11,303.52	\$183,333.33	\$1,283,333.33
42	12/1/18	\$1,283,333.33	\$192,904.88	\$9,571.53	\$183,333.33	\$1,100,000.00
43	1/1/19	\$1,100,000.00	\$191,810.97	\$8,477.64	\$183,333.33	\$916,666.67
44	2/1/19	\$916,666.67	\$190,398.03	\$7,064.70	\$183,333.33	\$733,333.33
45	3/1/19	\$733,333.33	\$188,438.15	\$5,104.81	\$183,333.33	\$550,000.00
46	4/1/19	\$550,000.00	\$187,572.15	\$4,238.82	\$183,333.33	\$366,666.67
47	5/1/19	\$366,666.67	\$186,068.06	\$2,734.72	\$183,333.33	\$183,333.33
48	6/1/19	\$183,333.33	\$184,746.27	\$1,412.94	\$183,333.33	(\$0.00)
Final	6/1/19	Final Payment	\$276,750.00	\$276,750.00	\$0.00	
		<b>Totals</b>	<b>\$5,967,990.86</b>	<b>\$1,467,990.86</b>	<b>\$4,500,000.00</b>	



Consent of Independent Registered Public Accounting Firm

Cytori Therapeutics, Inc.  
San Diego, California

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement of our report dated March 24, 2017, relating to the consolidated financial statements and schedule of Cytori Therapeutics, Inc. (“Company”), which is incorporated by reference in that Prospectus. Our report contains an explanatory paragraph regarding the Company’s ability to continue as a going concern.

We also consent to the reference to us under the caption “Experts” in the Prospectus.

/s/ BDO USA, LLP

San Diego, California  
September 29, 2017

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Cytori Therapeutics, Inc.

We consent to the incorporation by reference in the registration statement on Form S-1/A of Cytori Therapeutics, Inc. issued on September 29, 2017, 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 under the heading "Experts" in the prospectus.

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  
September 29, 2017

**FORM OF  
INSTRUCTIONS AS TO USE OF SUBSCRIPTION RIGHTS CERTIFICATES  
CYTORI THERAPEUTICS, INC.**

**Please consult Broadridge Corporate Issuer Solutions, Inc., your bank or broker as to any questions.**

The following instructions relate to a rights offering (the "Rights Offering") by Cytori Therapeutics, Inc., a Delaware corporation ("Cytori"), to the holders of record of its common stock, \$0.001 par value (the "Common Stock"), as described in Cytori's prospectus dated [\_\_\_\_], 2017 (the "Prospectus"). Each holder of record of Common Stock at the close of business on October 27, 2017 (the "Record Date") will receive, at no charge, a non-transferable subscription right (the "Subscription Right") for every share of Common Stock held or deemed to be held at the Record Date.

Subscription Rights exercisable into an aggregate of 10,000 Units of Cytori ("Units") are being distributed in connection with the Rights Offering. Each Unit is comprised of one share of Series B Preferred Stock and 1,250 warrants ("Warrants"). Each Warrant will be exercisable for one share of Common Stock. Each whole Subscription Right is exercisable, upon payment of \$1,000 in cash (the "Subscription Price"), to purchase one Unit (the "Basic Subscription Right"). In addition, each Subscription Right also carries the right to subscribe at the Subscription Price for additional Units that are not purchased by other holders pursuant to their Basic Subscription Right (to the extent available, and subject to proration and ownership limitations) (the "Over-Subscription Privilege"). A holder is entitled to exercise an Over-Subscription Privilege only if the holder fully exercises the Basic Subscription Right. See "The Rights Offering" in the Prospectus.

No fractional Subscription Rights or cash in lieu thereof will be issued or paid. Fractional Subscription Rights will be rounded down to the nearest whole number.

The Subscription Rights will expire at 5:00 p.m., Eastern Time, on November 21, 2017, unless extended ("the "Expiration Date"). If you do not exercise your Subscription Rights before that time, your Subscription Rights will expire and will no longer be exercisable. Cytori will not be required to issue shares to you if the Subscription Agent receives your Subscription Rights Certificate or your subscription payment after that time. Cytori has the option to extend the Rights Offering in its sole discretion, although it does not presently intend to do so. Cytori may extend the Rights Offering by giving oral or written notice to the Subscription Agent before the Expiration Date. If Cytori elects to extend the Rights Offering, Cytori will issue a press release announcing the extension no later than 9:00 a.m., Eastern Time, on the next business day after the most recently announced Expiration Date of the Rights Offering.

The number of Subscription Rights to which you are entitled is printed on the face of your Subscription Rights Certificate. You should indicate your wishes with regard to the exercise of your Subscription Rights by completing the appropriate section on the back of your Subscription Rights Certificate and returning the Subscription Rights Certificate with your payment to the Subscription Agent in the envelope provided.

Warrants that are issued as a component of the Unit pursuant to the exercise of the Basic Subscription Rights and Over-Subscription Privilege entitle the holder to purchase one share of Common Stock at an exercise price (subject to adjustment) of \$0.48 per share. The Warrants are exercisable for cash, or solely during any period when a registration statement for the exercise of the Warrants is not in effect, on a cashless basis. The Warrants may be redeemed for \$0.01 per Warrant if Cytori's Common Stock closes above \$[\_\_\_\_] per share for 10 consecutive trading days, upon 30 days' prior written notice of redemption. See "The Rights Offering" in the Prospectus.

**YOUR SUBSCRIPTION RIGHTS CERTIFICATE MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE EXPIRATION DATE. PAYMENT OF THE SUBSCRIPTION PRICE OF ALL SUBSCRIPTION RIGHTS EXERCISED, INCLUDING SUBSCRIPTION RIGHTS PURSUANT TO THE OVER-SUBSCRIPTION PRIVILEGE, INCLUDING FINAL CLEARANCE OF ANY CHECKS, MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE EXPIRATION DATE.**

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**ONCE YOU EXERCISE YOUR SUBSCRIPTION RIGHTS, YOU CANNOT REVOKE THE EXERCISE OF SUCH SUBSCRIPTION RIGHTS. SUBSCRIPTION RIGHTS NOT VALIDLY EXERCISED PRIOR TO THE EXPIRATION DATE OF THE RIGHTS OFFERING WILL EXPIRE. IN CASE YOU HOLD SUBSCRIPTION RIGHTS THROUGH A BROKER OR OTHER NOMINEE, YOU SHOULD VERIFY WITH YOUR BROKER OR NOMINEE BY WHEN YOU MUST DELIVER YOUR INSTRUCTION.**

**1. Subscription Rights.** To exercise Subscription Rights, complete your Subscription Rights Certificate and send your properly completed and executed Subscription Rights Certificate, together with payment in full of the Subscription Price for each Unit subscribed for pursuant to the Basic Subscription Right and the Over-Subscription Privilege, to the Subscription Agent. **PLEASE DO NOT SEND RIGHTS CERTIFICATES OR PAYMENTS TO CYTORI.** The method of delivery of the Subscription Rights Certificate and the payment of the Subscription Price to the Subscription Agent is at your election and risk. Subscription Rights Certificates and payments must be received by the Subscription Agent prior to the Expiration Date. If you send your Subscription Rights Certificate and payment by mail, then they should be sent by registered mail, properly insured, to arrive before the Expiration Date. If more Units are subscribed for pursuant to the Over-Subscription Privilege than are available for sale, additional Units will be allocated pro rata among holders and subject to ownership limitations, as described in the Prospectus. The Subscription Rights are non-transferable, and may not be sold, transferred, assigned or given away to anyone.

**2. Acceptance of Payments.** Payments will be deemed to have been received by the Subscription Agent only upon the (i) clearance of an uncertified personal check drawn against a U.S. bank payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.," (ii) receipt of a certified check drawn against a U.S. bank payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.," (iii) receipt of a U.S. Postal money order payable to "Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for Cytori Therapeutics, Inc.,"; or (iv) receipt of a wire transfer of immediately available funds directly to the account maintained by Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent, for purposes of accepting subscriptions in this Rights Offering at U.S. Bank, ABA, # 123000848, Account # 153910728465 FBO Cytori Therapeutics, Inc., with reference to the name of the Subscription Rights holder. Funds paid by uncertified personal check may take several business days to clear. Accordingly, if you wish to pay the Subscription Price by uncertified personal check, then you should make payment sufficiently in advance of the Expiration Date to ensure its receipt and clearance by that time. To avoid disappointment caused by a failure of your subscription due to your payment not clearing prior to the expiration date, Cytori urges you to consider payment by means of certified or cashier's check, money order or wire transfer. It is highly recommend that if you intend to pay the Subscription Price by personal check, then your subscription payment should be received by the Subscription Agent well before the Expiration Date. If your personal check does not clear before the Expiration Date, then you will not receive any Units, and Cytori's only obligation will be to return your subscription payment, without interest or deduction.

**3. Contacting the Subscription Agent.** The address and telephone number of the Subscription Agent are shown below. Delivery to an address other than shown below does not constitute valid delivery.

*By mail:*

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS Re-Organization Dept.  
P.O. Box 1317  
Brentwood, New York 11717-0693  
(855) 793-5068 (toll free)

*By hand or overnight courier:*

\_\_\_\_\_  
Broadridge Corporate Issuer Solutions, Inc.  
Attn: BCIS IWS  
51 Mercedes Way  
Edgewood, New York 11717  
(855) 793-5068

**4. Partial Exercises; Effect of Over- and Under-Payments.** If you exercise less than all of the Subscription Rights evidenced by your Subscription Rights Certificate, the Subscription Agent will issue to you a new Subscription Rights Certificate evidencing the unexercised Subscription Rights. However, if you choose to have a new Subscription Rights Certificate sent to you, you may not receive any such new Subscription Rights Certificate in sufficient time to permit exercise of the Subscription Rights evidenced thereby. If you do not indicate the number of Units to be subscribed for on your Subscription Rights Certificate, or if you indicate a number of Units that does not correspond with the aggregate Subscription Price payment you delivered, you will be deemed to have subscribed for the maximum number of Units that may be subscribed for, under both the Basic Subscription Right and the Over-

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Subscription Privilege, for the aggregate Subscription Price you delivered. If the Subscription Agent does not apply your full Subscription Price payment to your purchase of Units, then the Subscription Agent will return the excess amount to you by mail, without interest or deduction, within 10 business days after the Expiration Date. If you subscribe for fewer than all of the Units represented by your Subscription Rights Certificate, then the unexercised Subscription Rights will become null and void on the Expiration Date.

**5. Deliveries to holders.** The following deliveries and payments to you will be made to the address shown on the face of your Subscription Rights Certificate:

(a) **Basic Subscription Right.** The shares of Series B Preferred Stock and Warrants that are purchased pursuant to the valid exercise of Basic Subscription Rights to purchase Units will be issued in book-entry, or uncertificated, form meaning that you will receive a direct registration (DRS) account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of Common Stock. The Subscription Agent will arrange for the issuance of the Series B Preferred Stock and Warrants as soon as practicable after the expiration of the Rights Offering, payment for the Units subscribed for has cleared, and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected. If you hold your shares of Common Stock in the name of a custodian bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering.

(b) **Over-Subscription Privilege.** The shares of Series B Preferred Stock and Warrants that are purchased pursuant to the valid exercise of Over-Subscription Privileges to purchase additional Units will also be issued in book-entry, or uncertificated, form meaning that you will receive a DRS account statement from our transfer agent reflecting ownership of these securities if you are a holder of record of Common Stock. The Subscription Agent will arrange for the issuance of the Series B Preferred Stock and Warrants as soon as practicable after the expiration of the Rights Offering, payment for the Units subscribed for has cleared, and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected. If you hold your shares of Common Stock in the name of a custodian bank, broker, dealer, or other nominee, DTC will credit your account with your nominee with the securities you purchased in the Rights Offering.

(c) **Excess Payments.** If you exercised your Over-Subscription Privilege and are allocated less than all of the Units for which you wished to oversubscribe, then your excess Subscription Price payment for Units that were not allocated to you will be returned by the Subscription Agent to you by mail, without interest or deduction, within 10 business days after the Expiration Date.

**6. Execution.**

(a) **Execution by Registered Holder.** The signature on the Subscription Rights Certificate must correspond with the name of the registered holder exactly as it appears on the face of the Subscription Rights Certificate without any alteration or change whatsoever. Persons who sign the Subscription Rights Certificate in a representative or other fiduciary capacity must indicate their capacity when signing and, unless waived by the Subscription Agent in its sole and absolute discretion, must present to the Subscription Agent satisfactory evidence of their authority so to act.

(b) **Execution by Person Other Than Registered Holder.** If the Subscription Rights Certificate is executed by a person other than the holder named on the face of the Subscription Rights Certificate, proper evidence of authority of the person executing the Subscription Rights Certificate must accompany the same unless the Subscription Agent, in its discretion, dispenses with proof of authority.

**7. Method of Delivery.** The method of delivery of Subscription Rights Certificates and payment of the Subscription Price to the Subscription Agent will be at the election and risk of the Subscription Rights holder. If sent by mail, it is recommended that they be sent by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to and receipt by the Subscription Agent prior to the Expiration Date.

**8. No Revocation.** If you exercise any of your Basic Subscription Rights or Over-Subscription Privilege, you will not be permitted to revoke or change the exercise or request a refund of monies paid. You should not exercise your Subscription Rights unless you are sure that you wish to purchase Units at the Subscription Price.

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Once you exercise your Subscription Rights, you cannot revoke the exercise of such Subscription Rights even if you later learn information that you consider to be unfavorable.

**9. Special Provisions Relating to the Exercise of Subscription Rights through the Depository Trust Company.** In the case of Subscription Rights that are held of record through The Depository Trust Company (“DTC”), exercises of the Subscription Rights may be effected by instructing DTC to transfer Subscription Rights from the DTC account of such holder to the DTC account of the Subscription Agent, together with certification as to the aggregate number of Subscription Rights exercised pursuant to the Subscription Right by each beneficial owner of Subscription Rights on whose behalf such nominee is acting, and payment of the Subscription Price for each Unit subscribed for. Banks, brokers and other nominee holders of Subscription Rights who exercise the Basic Subscription Right and the Over-Subscription Privilege on behalf of beneficial owners of Subscription Rights will be required to certify to the Subscription Agent and Cytore as to the aggregate number of Subscription Rights that have been exercised, and the number of Units that are being subscribed for pursuant to the Over-Subscription Privilege, by each beneficial owner of Subscription Rights (including such nominee itself) on whose behalf such nominee holder is acting. In the event such certification is not delivered in respect of a Subscription Rights Certificate, the Subscription Agent shall for all purposes (including for purposes of any allocation in connection with the Over-Subscription Privilege) be entitled to assume that such certificate is exercised on behalf of a single beneficial owner.

**10. Questions and Request for Additional Materials.** For questions regarding the Rights Offering, assistance regarding the method of exercising Subscription Rights or for additional copies of relevant documents, please contact the Information Agent as follows:

**Broadridge Corporate Issuer Solutions, Inc.**  
**(855) 793-5068 (toll free)**



**FORM OF  
LETTER TO STOCKHOLDERS WHO ARE RECORD HOLDERS  
CYTORI THERAPEUTICS, INC.**

Subscription Rights to Purchase Units  
Offered Pursuant to Subscription Rights Distributed to Stockholders of Cytori Therapeutics, Inc.

[\_\_\_\_], 2017

Dear Stockholder:

This letter is being distributed by Cytori Therapeutics, Inc. (the "Company") to all holders of record of shares of its common stock, \$0.001 par value per share (the "Common Stock") as of 5:00 p.m., Eastern Time, on October 27, 2017 (the "Record Date"), in connection with a distribution in a rights offering (the "Rights Offering") of non-transferable subscription rights (the "Subscription Rights") to subscribe for and purchase units ("Units"). Each Unit entitles the holder to one share of the Company's Series B Preferred Stock and 1,250 warrants. Each warrant will be exercisable for one share of Common Stock. The Subscription Rights and Units are described in the prospectus dated [\_\_\_\_], 2017 (a copy of which accompanies this notice) (the "Prospectus").

Pursuant to the Rights Offering, the Company is issuing Subscription Rights to subscribe for up to 10,000 Units on the terms and subject to the conditions described in the Prospectus, at a subscription price of \$1,000 per Unit (the "Subscription Price").

The Subscription Rights may be exercised at any time during the subscription period, which commences on November 1, 2017 and ends at 5:00 p.m., Eastern Time, on November 21, 2017, unless extended in the sole discretion of the Company and Maxim Group LLC (as it may be extended, the "Expiration Date").

As described in the Prospectus, holders will receive one Subscription Right for every share of Common Stock owned on the Record Date, evidenced by non-transferable Subscription Rights certificates (the "Subscription Rights Certificates"). Each Subscription Right entitles the holder to purchase one Unit at the Subscription Price (the "Basic Subscription Right").

Based on 33,328,401 shares of common stock outstanding as of June 30, 2017, we would grant Subscription Rights to acquire 33,328,401 Units but will only accept subscriptions for 10,000 Units. Accordingly, sufficient Units may not be available to honor your subscription in full. If exercises of Basic Subscription Rights exceed the number of Units available in the Rights Offering, we will allocate the available Units pro-rata among the record holders exercising the Basic Subscription Rights in proportion to the number of shares of our common stock each of those record holders owned on the Record Date, relative to the number of shares owned on the Record Date by all record holders exercising the Over-Subscription Privilege. If this pro-rata allocation results in any record holders receiving a greater number of Units than the record holder subscribed for pursuant to the exercise of the Basic Subscription Rights, then such record holder will be allocated only that number of Units for which the record holder subscribed, and the remaining Units will be allocated among all other record holders exercising their Basic Subscription Rights on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated. If for any reason the amount of Units allocated to you is less than you have subscribed for, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.

The Company will not issue fractional shares or warrants. Fractional shares or warrants resulting from the exercise of the Basic Subscription Rights and the Over-Subscription Privileges will be eliminated by rounding down to the nearest whole Unit. Any excess subscription payment received by the Subscription Agent will be returned, without interest or penalty, within 10 business days following the expiration of the Offering.

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Enclosed are copies of the following documents:

1. Prospectus
2. Subscription Rights Certificate
3. Instructions As to Use of Subscription Rights Certificates
4. Notice of Important Tax Information
5. A return envelope, addressed to Broadridge Corporate Issuer Solutions, Inc. (the "Subscription Agent")

Your prompt attention is requested. To exercise your Subscription Rights, you should deliver the properly completed and signed Subscription Rights Certificate, with payment of the Subscription Price in full for each Unit subscribed for pursuant to the Basic Subscription Right and Over-Subscription Privilege, if applicable, to the Subscription Agent, as indicated in the Prospectus. The Subscription Agent must receive the properly completed and duly executed Subscription Certificate and full payment of the Subscription Price, including final clearance of any checks, prior to the Expiration Date.

You cannot revoke the exercise of your Subscription Right. Subscription Rights not exercised at or prior to 5:00 p.m., Eastern Time, on the Expiration Date will expire.

**ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC., THE INFORMATION AGENT, TOLL-FREE AT (855) 793-5068.**

**FORM OF  
LETTER TO BROKERS, DEALERS, BANKS AND OTHER NOMINEES  
CYTORI THERAPEUTICS, INC.**

Subscription Rights to Purchase Units  
Offered Pursuant to Subscription Rights Distributed to Shareholders of Cytori Therapeutics, Inc.

[\_\_\_\_], 2017

To Brokers, Dealers, Banks and Other Nominees:

This letter is being distributed by Cytori Therapeutics, Inc. (the "Company") to brokers, dealers, banks and other nominees in connection with the rights offering (the "Rights Offering") by Cytori Therapeutics, Inc. (the "Company") to subscribe for and purchase Units (as defined below), pursuant to non-transferable subscription rights ("Subscription Rights") distributed to all holders of record of the Company's common stock, \$0.001 par value per share (the "Common Stock"), as of 5:00 p.m., Eastern Time, on October 27, 2017 (the "Record Date"). Each Unit entitles the holder to one share of the Company's Series B Preferred Stock, \$0.001 par value per share, and 1,250 warrants. Each warrant will be exercisable for one share of Common Stock. The Subscription Rights and Units are described in the prospectus dated [\_\_\_\_], 2017 (a copy of which accompanies this notice) (the "Prospectus").

Pursuant to the Rights Offering, the Company is issuing Subscription Rights to subscribe for up to 10,000 Units on the terms and subject to the conditions described in the Prospectus, at a subscription price of \$1,000 per Unit (the "Subscription Price").

The Subscription Rights may be exercised at any time during the subscription period, which commences on November 1, 2017 and ends at 5:00 p.m., Eastern Time, on November 21, 2017, unless extended in the sole discretion of the Company and Maxim Group LLC (as it may be extended, the "Expiration Date").

As described in the Prospectus, each beneficial owner of shares of Common Stock is entitled to one Subscription Right for every share of Common Stock owned by such beneficial owner on the Record Date, evidenced by non-transferable Subscription Rights certificates (the "Subscription Rights Certificates") registered in the record holder's name or its nominee. Each Subscription Right entitles holder to purchase one Unit at the Subscription Price (the "Basic Subscription Right").

Holders who fully exercise their Basic Subscription Right will be entitled to subscribe for additional Units that remain unsubscribed as a result of any unexercised Basic Subscription Right (the "Over-Subscription Privilege"). Subject to stock ownership limitations described in the Prospectus, if sufficient Units are available, all Over-Subscription Privilege requests will be honored in full. If Over-Subscription Privilege requests for Units exceed the remaining Units available, the remaining Units will be allocated pro-rata among holders who over-subscribe based on the number of shares of Common Stock held by all holders exercising the Over-Subscription Privilege. If this pro rata allocation results in any holder receiving a greater number of Units than the holder subscribed for, then such holder will be allocated only the number of Units for which the holder oversubscribed, and the remaining Units will be allocated among all holders exercising the Over-Subscription Privilege on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated.

The Company will not issue fractional shares. Fractional shares resulting from the exercise of the Basic Subscription Rights and the Over-Subscription Privileges will be eliminated by rounding down to the nearest whole Unit. Any excess subscription payment received by the Subscription Agent will be returned, without interest or penalty, within 10 business days following the expiration of the Offering.

The Company is asking persons who hold shares of the Company's Common Stock beneficially, and who have received the Subscription Rights distributable with respect to those securities through a broker, dealer, bank, or other nominee, to contact the appropriate institution or nominee and request it to effect the transactions for them.

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If you exercise Subscription Rights on behalf of beneficial owners, you will be required to certify to the Subscription Agent and the Company, in connection with such exercise, as to the aggregate number of Subscription Rights that have been exercised pursuant to the Basic Subscription Right, whether the Basic Subscription Rights of each beneficial owner of Subscription Rights on whose behalf you are acting has been exercised in full, and the number of Units being subscribed for pursuant to the Over-Subscription Privilege by each beneficial owner of Subscription Rights on whose behalf you are acting.

The Company is asking you to contact your clients for whom you hold shares of Common Stock registered in your name or the name of your nominee to obtain instruction with respect to the Subscription Rights.

Enclosed are copies of the following documents:

1. Prospectus
2. Subscription Rights Certificate
3. Instructions as to Use of Subscription Rights Certificates
4. Form of Letter to Shareholders Who are Beneficial Holders
5. Form of Beneficial Owner Election Form
6. Form of Nominee Holder Certification

All commissions, fees and other expenses (including brokerage commissions and transfer taxes), other than fees and expenses of the Subscription Agent, incurred in connection with the exercise of the Subscription Rights will be for the account of the holder, and none of such commissions, fees or expenses will be paid by the Company or the Subscription Agent.

Your prompt action is requested. To exercise the Subscription Rights, you should deliver the properly completed and signed Subscription Rights Certificate, with payment of the Subscription Price in full for each Unit subscribed for pursuant to the Basic Subscription Right and Over-Subscription Privilege, if applicable, to the Subscription Agent, as indicated in the Prospectus. The Subscription Agent must receive the property completed and duly executed Subscription Rights Certificate and full payment of the Subscription Price, including final clearance of any checks, prior to the Expiration Date.

A holder cannot revoke the exercise of a Subscription Right. Subscription Rights not exercised at or prior to 5:00 p.m., Eastern Time, on the Expiration Date will expire.

**ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC., THE INFORMATION AGENT, TOLL-FREE AT (855) 793-5068.**

**NOTHING HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL MAKE YOU OR ANY OTHER PERSON AN AGENT OF THE COMPANY, THE DEALER-MANAGER, THE SUBSCRIPTION AGENT, THE INFORMATION AGENT OR ANY OTHER PERSON MAKING OR DEEMED TO BE MAKING OFFERS OF THE SECURITIES ISSUABLE UPON VALID EXERCISE OF THE SUBSCRIPTION RIGHTS, OR AUTHORIZE YOU OR ANY OTHER PERSON TO MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE OFFERING, EXCEPT FOR STATEMENTS MADE IN THE PROSPECTUS.**

**FORM OF  
BROKER LETTER TO CLIENTS WHO ARE BENEFICIAL HOLDERS  
CYTORI THERAPEUTICS, INC.**

Subscription Rights to Purchase Units  
Offered Pursuant to Subscription Rights Distributed to Shareholders of Cytori Therapeutics, Inc.

[\_\_\_\_], 2017

To our Clients:

This letter is being distributed to our clients who are holders of Cytori Therapeutics, Inc. (the “Company”) common stock, \$0.001 par value per share (the “Common Stock”), as of 5:00 p.m., Eastern Time, on October 27, 2017 (the “Record Date”), in connection with a distribution in a rights offering (the “Rights Offering”) of non-transferable subscription rights (the “Subscription Rights”) to subscribe for and purchase units (“Units”). Each Unit entitles the holder to one share of the Company’s Series B Preferred Stock, \$0.001 par value per share, and 1,250 warrants. Each warrant will be exercisable for one share of Common Stock. The Subscription Rights and Units are described in the prospectus dated [\_\_\_\_], 2017 (a copy of which accompanies this notice) (the “Prospectus”).

Pursuant to the Rights Offering, the Company is issuing Subscription Rights to subscribe for up to 10,000 Units on the terms and subject to the conditions described in the Prospectus, at a subscription price of \$1,000 per Unit (the “Subscription Price”).

The Subscription Rights may be exercised at any time during the subscription period, which commences on November 1, 2017 and ends at 5:00 p.m., Eastern Time, on November 21, 2017, unless extended by the Company in its sole discretion (as it may be extended, the “Expiration Date”).

As described in the Prospectus, holders will receive one Subscription Right for every share of Common Stock owned on the Record Date, evidenced by non-transferable Subscription Rights certificates (the “Subscription Rights Certificates”). Each Subscription Right entitles the holder to purchase one Unit at the Subscription Price (the “Basic Subscription Right”).

Based on 33,328,401 shares of Common Stock outstanding as of June 30, 2017, we would grant Subscription Rights to acquire 33,328,401 Units but will only accept subscriptions for 10,000 Units. Accordingly, sufficient Units may not be available to honor your subscription in full. If exercises of Basic Subscription Rights exceed the number of Units available in the Rights Offering, we will allocate the available Units pro-rata among the record holders exercising the Basic Subscription Rights in proportion to the number of shares of our Common Stock each of those record holders owned on the Record Date, relative to the number of shares owned on the Record Date by all record holders exercising the Over-Subscription Privilege. If this pro-rata allocation results in any record holders receiving a greater number of Units than the record holder subscribed for pursuant to the exercise of the Basic Subscription Rights, then such record holder will be allocated only that number of Units for which the record holder subscribed, and the remaining Units will be allocated among all other record holders exercising their Basic Subscription Rights on the same pro rata basis described above. The proration process will be repeated until all Units have been allocated. If for any reason the amount of Units allocated to you is less than you have subscribed for, then the excess funds held by the Subscription Agent on your behalf will be returned to you, without interest, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected, and we will have no further obligations to you.

The Company will not issue fractional shares. Fractional shares resulting from the exercise of the Basic Subscription Rights and the Over-Subscription Privileges will be eliminated by rounding down to the nearest whole Unit. Any excess subscription payment received by the Subscription Agent will be returned, without interest or penalty, within 10 business days following the expiration of the Offering.

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Enclosed are copies of the following documents:

1. Prospectus
2. Form of Beneficial Owner Election Form
3. Instructions As to Use of Subscription Rights Certificates

THE MATERIALS ENCLOSED ARE BEING FORWARDED TO YOU AS THE BENEFICIAL OWNER OF COMMON STOCK HELD BY US IN YOUR ACCOUNT BUT NOT REGISTERED IN YOUR NAME. EXERCISES OF SUBSCRIPTION RIGHTS MAY BE MADE ONLY BY US AS THE RECORD OWNER AND PURSUANT TO YOUR INSTRUCTIONS.

Accordingly, we request instructions as to whether you wish us to elect to subscribe for any Units to which you are entitled pursuant to the terms and subject to the conditions set forth in the enclosed Prospectus and other materials. However, we urge you to read the Prospectus and other enclosed materials carefully before instructing us to exercise your Subscription Rights.

Your instructions to us should be forwarded as promptly as possible in order to permit us to exercise Subscription Rights on your behalf in accordance with the provisions of the Rights Offering. The Rights Offering will expire at 5:00 p.m., Eastern Time, on the Expiration Date. You are encouraged to forward your instructions to us before the Expiration Date to allow us ample time to act upon your instructions. A holder cannot revoke the exercise of a Subscription Right.

If you wish to have us, on your behalf, exercise the Subscription Rights for any Units to which you are entitled, please so instruct us by timely completing, executing, and returning to us the Beneficial Owner Election Form enclosed with this notice.

**ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC., THE INFORMATION AGENT, TOLL-FREE AT (855) 793-5068.**

**FORM OF  
BENEFICIAL OWNER ELECTION FORM  
CYTORI THERAPEUTICS, INC.**

The undersigned acknowledge(s) receipt of your letter and the enclosed materials referred to therein relating to the rights offering (the "Rights Offering") by Cytori Therapeutics, Inc., a Delaware corporation (the "Company"), of non-transferable subscription rights (the "Subscription Rights") to purchase units (the "Units"), each such Unit comprised of a share of the Company's Series B Preferred Stock, \$0.001 par value, and 1,250 warrants. Each warrant will be exercisable for one share of the Company's common stock, \$0.001 par value ("Common Stock").

This will instruct you whether to exercise Subscription Rights to purchase Units distributed with respect to the shares of the Common Stock held by you for the account of the undersigned, pursuant to the terms and subject to the conditions set forth in the Prospectus. (Check the applicable boxes and provide all required information.)

- Please DO NOT EXERCISE SUBSCRIPTION RIGHTS for Units.
- Please EXERCISE SUBSCRIPTION RIGHTS for Units as set forth below:

	No. of Units		Per Unit Subscription Price	=	Payment
Basic Subscription Right	[_____]	X	\$1,000	=	\$[_____]
Over-Subscription Privilege	[_____]	X	\$1,000	=	\$[_____]
Total Payment Required					\$[_____]

If you spoke with a broker who solicited such exercise, please indicate the name of the person you spoke with: \_\_\_\_\_.

- Payment in the following amount is enclosed \$\_\_\_\_\_ (must match Total Payment Required above)
- Please deduct payment from the following account maintained by you as follows:

Type of Account:

Account No.:

Amount to be deducted: \$

I (we) on my (our) own behalf, or on behalf of any person(s) on whose behalf, or under whose directions, I am (we are) signing this form:

- irrevocably elect to purchase the number of Units indicated above upon the terms and conditions specified in the Prospectus; and
- agree that if I (we) fail to pay for the shares I (we) have elected to purchase, the exercise will be invalid.

Signature:

Name:

Title:

Address:

Telephone:

Date: \_\_\_\_\_, 2017

**FORM OF  
NOMINEE HOLDER CERTIFICATION  
CYTORI THERAPEUTICS, INC.**

The undersigned, a bank, broker, dealer, trustee, depository, or other nominee of non-transferable subscription rights (the "Subscription Rights") to purchase units ("Units") of Cytori Therapeutics, Inc. (the "Company"), said Units each comprised of one share of Series B Preferred Stock and 1,250 warrants pursuant to the Subscription Rights offering described and provided for in the Company's Prospectus dated [\_\_\_\_], 2017, hereby certifies to the Company and Broadridge Corporate Issuer Solutions, Inc., as Subscription Agent for such Rights Offering, that (1) the undersigned has exercised, on behalf of the beneficial owners thereof (which may include the undersigned), the number of Subscription Rights on the terms and subject to the conditions set forth in the Prospectus specified below pursuant to the Basic Subscription Right (as defined in the Prospectus) and, on behalf of beneficial owners of Subscription Rights who have subscribed for the purchase of additional Units pursuant to the Over-Subscription Privilege (as defined in the Prospectus), the number of Units specified below, listing separately below each such exercised Basic Subscription Right and the corresponding Over-Subscription Privilege (without identifying any such beneficial owner), and (2) to the extent a beneficial owner has elected to subscribe for Units pursuant to the Over-Subscription Privilege, each such beneficial owner's Basic Subscription Right has been exercised in full:

<b>Number of Shares Owned on the Record Date</b>	<b>Individual Soliciting Broker (if any)</b>	<b>Number of Units Subscribed for Pursuant to the Basic Subscription Right</b>	<b>Number of Units Subscribed for Pursuant to the Over-Subscription Privilege</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Name of Nominee Holder

By:

Name:

Title:

Phone Number:

Fax Number:

Dated:

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Provide the following information, if applicable:

DTC Participant Number

DTC Participant

By:

Name:

Title:

DTC Basic Subscription  
Confirmation Number(s)

Dated:

**FORM OF  
NOTICE OF IMPORTANT TAX INFORMATION  
CYTORI THERAPEUTICS, INC.**

The tax information is provided in connection with the prospectus of Cytori Therapeutics, Inc. (“Cytori”) dated [\_\_\_\_], 2017 (the “Prospectus”).

Under the U.S. federal income tax laws, dividend payments (including constructive dividends) that may be made by Cytori on shares of its Series B Preferred Stock acquired through the exercise of the Subscription Rights or shares of its common stock acquired through conversion of its Series B Preferred Stock or exercise of the Warrants, themselves issued through the exercise of the Subscription Rights, may be subject to backup withholding. Generally such payments will be subject to backup withholding unless the holder (i) is exempt from backup withholding or (ii) furnishes the payer with its correct taxpayer identification number (“TIN”) and certifies, under penalties of perjury, that the number provided is correct and provides certain other certifications. Each holder that exercises Subscription Rights and wants to avoid backup withholding must, unless an exemption applies, provide the Subscription Agent, as Cytori's agent in respect of the exercised Subscription Rights, with such holder's correct TIN (or with a certification that such holder is awaiting a TIN) and certain other certifications by completing the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification).

Certain holders (including, among others, corporations and certain foreign individuals) are exempt from these backup withholding and reporting requirements. In general, in order for a foreign holder to qualify as an exempt recipient, that holder must, in the case of a foreign individual, submit a properly completed Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) or, in the case of a foreign corporation, Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) or other appropriate form (instead of a Form W-9), signed under the penalties of perjury, attesting to such holder's foreign status. Such Form W-8BEN or Form W-8BEN-E may be obtained from the Subscription Agent. Although a foreign holder may be exempt from backup withholding, payments of dividends may be subject to withholding tax, currently at a 30% rate (or, if certain tax treaties apply, such applicable lower rate) or withholding tax at a rate of 30% under FATCA unless an exemption from FATCA withholding is certified. Exempt U.S. holders should indicate their exempt status on Form W-9 to avoid possible erroneous backup withholding. See the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification) for additional instructions. Holders are urged to consult their own tax advisors to determine whether they are exempt from withholding and reporting requirements.

If backup withholding applies, Cytori or the Subscription Agent, as the case may be, will be required to withhold (currently at a 28% rate) on any dividend payments made to a holder that exercises Subscription Rights. Backup withholding is not an additional tax. Rather, the amount of backup withholding can be credited against the U.S. federal income tax liability of the holder subject to backup withholding, provided that the required information is provided to the Internal Revenue Service (“IRS”). If backup withholding results in an overpayment of taxes, a refund may be obtained.

A holder that exercises Subscription Rights is required to give the Subscription Agent the TIN of the record owner of the Subscription Rights. If such record owner is an individual, the TIN is generally the taxpayer's social security number. For most other entities, the TIN is the employer identification number. If the Subscription Rights are in more than one name or are not in the name of the actual owner, consult the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification) for additional guidelines on which number to report. If the Subscription Agent is not provided with the correct TIN in connection with such payments, the holder may be subject to a penalty imposed by the IRS.