

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## AYTU BIOSCIENCE, INC

**Form: 10-Q**

**Date Filed: 2018-11-07**

Corporate Issuer CIK: 1385818

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended: September 30, 2018

or

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

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

Commission File No. 001-38247

AYTU BIOSCIENCE, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

47-0883144  
(IRS Employer  
Identification No.)

373 Inverness Parkway, Suite 206  
Englewood, Colorado 80112  
(Address of principal executive offices, including zip code)

(720) 437-6580  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

As of November 1, 2018, there were 8,634,102 shares of Common Stock outstanding.

**AYTU BIOSCIENCE, INC. AND SUBSIDIARY  
FOR THE QUARTER ENDED SEPTEMBER 30, 2018**

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act. All statements other than statements of historical facts contained in this Quarterly Report, including statements regarding our anticipated future clinical and regulatory events, future financial position, business strategy and plans and objectives of management for future operations, are forward-looking statements. Forward looking statements are generally written in the future tense and/or are preceded by words such as “may,” “will,” “should,” “forecast,” “could,” “expect,” “suggest,” “believe,” “estimate,” “continue,” “anticipate,” “intend,” “plan,” or similar words, or the negatives of such terms or other variations on such terms or comparable terminology. Such forward-looking statements include, without limitation: the planned expanded commercialization of our products and the potential future commercialization of our product candidates, our anticipated future cash position; our plan to acquire additional assets; our anticipated future growth rates; the anticipated arrival dates of certain supply orders; the expected recognition and amounts of certain future expenses and costs of goods sold; and future events under our current and potential future collaborations. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including without limitation the risks described in “Risk Factors” in Part I, Item 1A of our most recent Annual Report on Form 10-K, and in the reports we file with the Securities and Exchange Commission. These risks are not exhaustive. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Forward-looking statements should not be relied upon as predictions of future events. We can provide no assurance that the events and circumstances reflected in the forward-looking statements will be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. We assume no obligation to update or supplement forward-looking statements, except as may be required under applicable law.*

This Quarterly Report on Form 10-Q includes trademarks, such as Aytu, Natesto, ZolpiMist, ProstaScint, MiOXSYS, RedoxSYS, and Fiera, which are protected under applicable intellectual property laws and we own or have the rights to. Solely for convenience, our trademarks and trade names referred to in this Quarterly Report on Form 10-Q may appear without the ® or ™ symbols, but such references are not intended to indicate in any way that we will not assert, to the fullest extent under applicable law, our rights to these trademarks and trade names.

PART I—FINANCIAL INFORMATION

Item 1. Consolidated Financial Statements

AYTU BIOSCIENCE, INC. AND SUBSIDIARY  
Consolidated Balance Sheets

	September 30, 2018 (unaudited)	June 30, 2018
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 3,964,717	\$ 7,012,527
Restricted cash	100,148	100,000
Accounts receivable, net	760,056	578,782
Inventory, net	1,310,103	1,338,973
Prepaid expenses and other	736,980	440,009
Total current assets	<u>6,872,004</u>	<u>9,470,291</u>
Fixed assets, net	196,420	218,684
Licensed assets, net	10,674,462	11,120,086
Patents, net	239,611	245,944
Deposits	2,200	5,088
Total long-term assets	<u>11,112,693</u>	<u>11,589,802</u>
Total assets	<u>\$ 17,984,697</u>	<u>\$ 21,060,093</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable and other	\$ 2,111,783	\$ 2,119,672
Accrued liabilities	428,851	185,882
Accrued compensation	796,848	540,674
Current deferred rent	-	1,450
Current contingent consideration	249,631	547,100
Total current liabilities	<u>3,587,113</u>	<u>3,394,778</u>
Long-term contingent consideration	4,220,819	4,146,829
Warrant derivative liability	46,629	93,981
Total liabilities	<u>7,854,561</u>	<u>7,635,588</u>
Commitments and contingencies (Note 7)		
Stockholders' equity		
Preferred Stock, par value \$.0001; 50,000,000 shares authorized; shares issued and outstanding 0 and 0, respectively as of September 30, 2018 (unaudited) and June 30, 2018	-	-
Common Stock, par value \$.0001; 100,000,000 shares authorized; shares issued and outstanding 1,801,411 (unaudited) and 1,794,762, respectively as of September 30, 2018 and June 30, 2018	180	179
Additional paid-in capital	92,834,031	92,681,918
Accumulated deficit	(82,704,075)	(79,257,592)
Total stockholders' equity	<u>10,130,136</u>	<u>13,424,505</u>
Total liabilities and stockholders' equity	<u>\$ 17,984,697</u>	<u>\$ 21,060,093</u>

The accompanying notes are an integral part of these consolidated financial statements.

**AYTU BIOSCIENCE, INC. AND SUBSIDIARY**  
**Consolidated Statements of Operations**  
(unaudited)

	Three Months Ended September 30,	
	2018	2017
Product revenue, net	\$ 1,431,809	\$ 1,076,368
Total revenue	<u>1,431,809</u>	<u>1,076,368</u>
Operating expenses		
Cost of sales	410,959	287,201
Research and development	155,878	140,954
Sales, general and administrative	3,576,580	4,618,403
Sales, general and administrative - related party (Note 10)	253,709	-
Amortization of intangible assets	451,957	385,841
Total operating expenses	<u>4,849,083</u>	<u>5,432,399</u>
Loss from operations	<u>(3,417,274)</u>	<u>(4,356,031)</u>
Other (expense) income		
Interest (expense)	(76,561)	(188,745)
Derivative income	47,352	299,734
Total other (expense) income	<u>(29,209)</u>	<u>110,989</u>
Net loss	<u>\$ (3,446,483)</u>	<u>\$ (4,245,042)</u>
Weighted average number of common shares outstanding	<u>1,759,824</u>	<u>120,770</u>
Basic and diluted net loss per common share	<u>\$ (1.96)</u>	<u>\$ (35.15)</u>

The accompanying notes are an integral part of these consolidated financial statements.

**AYTU BIOSCIENCE, INC. AND SUBSIDIARY**  
**Consolidated Statement of Stockholders' Equity**  
(unaudited)

	Common Stock		Additional	Accumulated	Total
	Shares	Amount	paid-in capital	Deficit	Stockholders' Equity
Balance - June 30, 2018	1,794,762	\$ 179	\$ 92,681,918	\$ (79,257,592)	\$ 13,424,505
Stock-based compensation	-	-	65,563	-	65,563
Issuance of restricted stock	-	-	86,551	-	86,551
Adjustment for rounding of shares due to stock split	6,649	1	(1)	-	-
Net loss	-	-	-	(3,446,483)	(3,446,483)
Balance - September 30, 2018	<u>1,801,411</u>	<u>\$ 180</u>	<u>\$ 92,834,031</u>	<u>\$ (82,704,075)</u>	<u>\$ 10,130,136</u>

The accompanying notes are an integral part of these consolidated financial statements.

**AYTU BIOSCIENCE, INC. AND SUBSIDIARY**  
**Consolidated Statements of Cash Flows**  
(unaudited)

	Three Months Ended September 30,	
	2018	2017
Cash flows from operating activities		
Net loss	\$ (3,446,483)	\$ (4,245,042)
Adjustments to reconcile net loss to cash used in operating activities		
Stock-based compensation expense	65,563	195,105
Depreciation, amortization and accretion	556,807	653,313
Issuance of restricted stocks	86,551	72,306
Derivative income	(47,352)	(299,734)
Changes in operating assets and liabilities:		
(Increase) in accounts receivable	(181,274)	(683,806)
Decrease in inventory	28,870	140,961
(Increase) decrease in prepaid expenses and other	(296,971)	48,703
(Decrease) in accounts payable and other	(7,889)	(559,636)
Increase in accrued liabilities	242,969	120,850
Increase in accrued compensation	256,174	340,841
(Decrease) in deferred rent	(1,450)	(1,669)
Net cash used in operating activities	<u>(2,744,485)</u>	<u>(4,217,808)</u>
Cash flows used in investing activities		
Deposits	2,888	-
Purchases of fixed assets	(6,065)	-
Purchase of licensed assets	(300,000)	-
Net cash used in investing activities	<u>(303,177)</u>	<u>-</u>
Cash flows from financing activities		
Issuance of preferred, common stock and warrants	-	11,839,995
Issuance costs related to preferred, common stock and warrants	-	(1,402,831)
Net cash provided by financing activities	<u>-</u>	<u>10,437,164</u>
Net change in cash, cash equivalents and restricted cash	(3,047,662)	6,219,356
Cash, cash equivalents and restricted cash at beginning of period	<u>7,112,527</u>	<u>877,542</u>
Cash, cash equivalents and restricted cash at end of period	<u>\$ 4,064,865</u>	<u>\$ 7,096,898</u>
Warrants issued to investors and underwriters	\$ -	\$ 4,117,997
Earn-out payment to Nuelle Shareholders	\$ -	\$ 11,589

The accompanying notes are an internal part of these consolidated financial statements.



**AYTU BIOSCIENCE, INC. AND SUBSIDIARY**  
**Notes to Consolidated Financial Statements**  
**(unaudited)**

**Note 1 – Business, Basis of Presentation, License and Supply Agreements**

***Business***

Aytu BioScience, Inc. ("Aytu", the "Company" or "we") was incorporated as Rosewind Corporation on August 9, 2002 in the State of Colorado. Aytu was re-incorporated in the state of Delaware on June 8, 2015. Aytu is an emerging specialty pharmaceutical company focused on novel products that address significant medical needs. Aytu is focused on commercializing products that address hypogonadism (low testosterone), insomnia, and male infertility and plans to expand into other therapeutic areas.

***Basis of Presentation***

These unaudited consolidated financial statements represent the financial statements of Aytu and its wholly-owned subsidiary, Aytu Women's Health, LLC. These unaudited consolidated financial statements should be read in conjunction with Aytu's Annual Report on Form 10-K for the year ended June 30, 2018, which included all disclosures required by generally accepted accounting principles in the United States ("GAAP"). In the opinion of management, these unaudited consolidated financial statements contain all adjustments necessary to present fairly the financial position of Aytu for the balance sheet, the results of operations and cash flows for the interim periods presented. The results of operations for the period ended September 30, 2018 are not necessarily indicative of expected operating results for the full year. The information presented throughout this report as of and for the period ended September 30, 2018 and 2017 is unaudited.

The accompanying consolidated financial statements of the Company have been prepared in accordance with GAAP. On August 10, 2018, Aytu effected a reverse stock split in which each common stockholder received one share of common stock for every 20 shares outstanding (herein referred to collectively as the "Reverse Stock Split"). All share and per share amounts in this report have been adjusted to reflect the effect of this Reverse Stock Split.

**License and Supply Agreement—Natesto**

In April 2016, Aytu entered into a license and supply agreement to acquire the exclusive U.S. rights to distribute Natesto® (testosterone) nasal gel from Acerus Pharmaceuticals Corporation, or Acerus. We acquired the rights effective upon the expiration of the former licensee's rights, which occurred on June 30, 2016. The term of the license runs for the greater of eight years or until the expiry of the latest to expire patent including claims covering Natesto and until the entry on the market of at least one AB-rated generic product.

In addition to the upfront payments, we agreed to make one-time, non-refundable milestone payments to Acerus within 45 days of the occurrence of the milestones. The maximum aggregate amount payable under such milestone payments is \$37.5 million.

The fair value of the net identifiable Natesto asset acquired was determined to be \$10.5 million, which is being amortized over eight years. The amortization expense for each of the three-month periods ended September 30, 2018 and 2017 was \$330,000.

The contingent consideration was initially valued at \$3.2 million using a Monte Carlo simulation, as of June 30, 2016. As of June 30, 2018, the contingent consideration was revalued at \$1.8 million using the same Monte Carlo simulation methodology, and based on current interest rates, expected sales potential, and Aytu stock trading variables. The contingent consideration accretion expense for each of the three-month periods ended September 30, 2018 and 2017 was \$15,000, and \$161,000, respectively. As of September 30, 2018, none of the milestones had been achieved, and therefore, no milestone payment was made.

## **License Agreement—ZolpiMist**

In June 2018, Aytu signed an exclusive license agreement for ZolpiMist™ (zolpidem tartrate oral spray) from Magna Pharmaceuticals, Inc., (“Magna”). This agreement allows for Aytu’s exclusive commercialization of ZolpiMist in the U.S. and Canada.

Aytu made an upfront payment of \$400,000 to Magna upon execution of the agreement. In July 2018, we paid an additional \$300,000, of which, \$297,000 was included in current contingent consideration at June 30, 2018.

The ZolpiMist license agreement was valued at \$3.2 million and will be amortized over the life of the license agreement up to seven years. The amortization expense for each of the three months ended September 30, 2018 and 2017 was \$116,000 and \$0, respectively.

We also agreed to make certain royalty payments to Magna which will be calculated as a percentage of our ZolpiMist net sales and will be payable within 45 days of the end of the quarter during which the applicable net sales occur.

For the quarter ended September 30, 2018, the royalty payment will be approximately \$52,000, which will reduce the balance of our contingent consideration when it is paid.

The contingent consideration, related to these royalty payments, was valued at \$2.6 million using a Monte Carlo simulation, as of June 11, 2018. The contingent consideration accretion expense for the three months ended September 30, 2018 and 2017 was \$59,000, and \$0, respectively.

## **Liquidity Assessment**

Accounting Standards Update (“ASU”) No. 2014-15, Presentation of Financial Statements - Going Concern, requires management to evaluate the company’s ability to continue as a going concern one year beyond the filing date of the given financial statements. This evaluation requires management to perform two steps. First, management must evaluate whether there are conditions and events that raise substantial doubt about the entity’s ability to continue as a going concern. Second, if management concludes that substantial doubt is raised, management is required to consider whether it has plans in place to alleviate that doubt. Disclosures in the notes to the financial statements are required if management concludes that substantial doubt exists or that its plans alleviate the substantial doubt that was raised.

Prior to the date of this Report, we have financed operations through a combination of private and public debt and equity financings, funds from the sale of our products, and occasionally through divestitures of non-strategic assets. Our financing transactions have included private placements of stock and convertible notes, and public offerings of the Company’s equity securities. Since the formation of Aytu in June 2015, the Company has raised approximately \$65.1 million, inclusive of the \$15.2 million we raised in October 2018, from the sale of its securities to investors and the exercise of warrants by investors. Although it is difficult to predict our liquidity requirements, based upon our current operating plan, as of the date of this Report, we believe we will have sufficient cash to meet our projected operating requirements for fiscal 2019.

Based on management’s forecast of product revenue and related spending plans, the Company expects its existing cash balance to last more than one year beyond the date that the financial statements were issued. Based on this analysis, no additional disclosures are required.

## Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued ASU 2014-09, Topic 606, Revenue from Contracts with Customers. The amendments in this ASU provide a single model for use in accounting for revenue arising from contracts with customers and supersedes current revenue recognition guidance, including industry-specific revenue guidance. The core principle of the new ASU is that revenue should be recognized to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. New disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers are also required. ASC 606 and ASC 340-40 also require the deferral of incremental costs of obtaining contracts with customers and subsequent amortization of those costs of the period of anticipated benefit. Collectively, we refer to this guidance as "ASC 606".

Effective July 1, 2018, the Company adopted Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers* ("ASC 606"), the new standard on revenue from contracts with customers. Adoption of this ASU was done through the modified retrospective method but did not result in a cumulative adjustment to retained earnings or accumulated deficit as of the adoption date. This is due to the fact that the impact of adopting the new standard is not significant as it relates to historical revenues, future revenues, or accounting for incremental costs of obtaining a contract with a customer.

We adopted the new standard through applying the following conclusions (resulting from a thorough analysis of all contract types): (1) The new guidance did not materially change our existing policy and practice for identifying contracts with customers, nor did it give rise to changes to our existing policy and practice or create new concern surrounding the collectability of our receivables from customers, (2) none of our contracts with customers contain multiple performance obligations that are not fulfilled at the same time, (3) the new guidance did not change our existing policy and practice regarding the recording of variable consideration, and (4) we did not identify any customer acquisition costs that are incremental and that are expected to be recovered at a future time.

As mentioned above, the modified retrospective method of transition did not result in a cumulative adjustment as of July 1, 2018. Additionally, no other line items in the statement of operations or the balance sheet reflect any changes due to the adoption of the new standard. Adoption of the standards related to revenue recognition had no impact to cash from or used in operating, financing, or investing on our consolidated cash flows statement.

## Recently Issued Accounting Pronouncements, Not Adopted as of September 30, 2018

In August 2018, the FASB issued ASU 2018-13, "Fair Value Measurement (Topic 820) Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement." The amendments in the standard apply to all entities that are required, under existing GAAP, to make disclosures about recurring or nonrecurring fair value measurements. ASU 2018-13 removes, modifies, and adds certain disclosure requirements in ASC 820, Fair Value Measurement. The standard is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019.

The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of ASU 2018-13. An entity is permitted to early adopt any removed or modified disclosures upon issuance of ASU 2018-13 and delay adoption of the additional disclosures until their effective date. The Company is currently assessing the impact that ASU 2018-13 will have on its financial statements.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)." The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for leases for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company is currently evaluating the impact of its adoption of this standard on its consolidated financial statements.

## **Note 2 – Revenue Recognition**

We generate all of our revenues from the sale of products. Revenue is recognized when control of these promised products is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those products.

The Company determines revenue recognition through the following five-step model:

- (i) identification of the promised goods or services in the contract;
- (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract;
- (iii) measurement of the transaction price, including the constraint on variable consideration;
- (iv) allocation of the transaction price to the performance obligations; and
- (v) recognition of revenue when, or as the Company satisfies each performance obligation.

### **Product Revenues, Net**

The Company sells its products principally to a limited number of wholesale distributors and pharmacies in the United States, which account for the largest portion of our total revenues, and international sales are made primarily to specialty distributors, as well as hospitals, laboratories, and clinics many of which are government owned or supported (collectively, its "Customers"). The Company's Customers in the United States subsequently resell the products to patients and health care providers. In accordance with ASC 606, the Company recognizes net revenues from product sales when the Customer obtains control of the Company's product, which typically occurs upon delivery to the Customer. The Company's payment terms are approximately 30 days in the United States and consistent with prevailing practice in international markets.

Revenues from product sales are recorded at the net sales price, or "transaction price," which includes estimates of variable consideration that result from coupons, discounts, chargebacks and distributor fees, processing fees, as well as allowances for returns and government rebates. Provisions are established for the estimates of variable consideration based on the amounts earned or to be claimed on the related sale. Provision balances relating to estimated amounts payable to direct customers are netted against accounts receivable and balances relating to indirect customers are included in accounts payable and accrued liabilities. Where appropriate, the Company utilizes the expected value method to determine the appropriate amount for estimates of variable consideration based on factors such as the Company's historical experience and specific known market events and trends. We constrain our estimates based on factors that could lead to a probable reversal of revenue.

## Revenues by Geographic location

The following table reflects our product revenues by geographic location as determined by the billing address of our customers:

	Three Months Ended September 30,	
	2018	2017
U.S	\$ 1,273,000	\$ 931,000
Rest-of-the-World	159,000	145,000
Total net revenue	<u>\$ 1,432,000</u>	<u>\$ 1,076,000</u>

### Note 3 - Inventories

Inventories consist of raw materials, work in process and finished goods and are recorded at the lower of cost or net realizable value, with cost determined on a first-in, first-out basis. Aytu periodically reviews the composition of its inventories to identify obsolete, slow-moving or otherwise unsaleable items. If unsaleable items are observed and there are no alternate uses for the inventory, Aytu will record a write-down to net realizable value in the period that the impairment is first recognized. There was no inventory write-down during the three months ended September 30, 2018 or September 30, 2017.

Inventory balances consist of the following:

	September 30, 2018	June 30, 2018
Finished goods	\$ 1,033,000	\$ 239,000
Raw Materials	277,000	1,100,000
Total inventory	<u>\$ 1,310,000</u>	<u>\$ 1,339,000</u>

### Note 4 – Fixed Assets

Fixed assets are recorded at cost and, once placed in service, are depreciated on a straight-line basis over the estimated useful lives. Leasehold improvements are amortized over the shorter of the estimated economic life or related lease term. Fixed assets consist of the following:

	Estimated Useful Lives in years	As of September 30, 2018	As of June 30, 2018
Manufacturing equipment	2 - 5	\$ 36,000	\$ 213,000
Leasehold improvements	3	112,000	112,000
Office equipment, furniture and other	2 - 5	308,000	344,000
Lab equipment	3 - 5	90,000	90,000
Less accumulated depreciation and amortization		<u>(350,000)</u>	<u>(540,000)</u>
Fixed assets, net		<u>\$ 196,000</u>	<u>\$ 219,000</u>

The depreciation and amortization expense was as follows:

	Three Months Ended September 30,	
	2018	2017
Depreciation and amortization expense	\$ 28,000	\$ 80,000

**Note 5 – Patents**

The cost of the Luoxis patents were \$380,000 when they were acquired in connection with the 2013 formation of Luoxis and are being amortized over the remaining U.S. patent lives of approximately 15 years, which expires in March 2028. Patents consist of the following:

	As of September 30, 2018	As of June 30, 2018
Patents	\$ 380,000	\$ 380,000
Less accumulated amortization	(140,000)	(134,000)
Patents, net	<u>\$ 240,000</u>	<u>\$ 246,000</u>

The amortization expense was as follows:

	Three Months Ended September 30,	
	2018	2017
Amortization expense	\$ 6,000	\$ 6,000

#### Note 6 – Fair Value Considerations

Aytu's financial instruments include cash and cash equivalents, restricted cash, accounts receivable, accounts payable, accrued liabilities, warrant derivative liability, and contingent consideration. The carrying amounts of financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and accrued liabilities approximate their fair value due to their short maturities. The fair value of the warrant derivative liability was valued using the lattice valuation methodology. The fair value of acquisition-related contingent consideration is based on a monte carlo methodology using estimated discounted future cash flows and periodic assessments of the probability of occurrence of potential future events. The valuation policies are determined by the Chief Financial Officer, and the Company's Board of Directors is informed of any policy change.

Authoritative guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date. The guidance establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of Aytu. Unobservable inputs are inputs that reflect Aytu's assumptions of what market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on reliability of the inputs as follows:

- Level 1: Inputs that reflect unadjusted quoted prices in active markets that are accessible to Aytu for identical assets or liabilities;
- Level 2: Inputs that include quoted prices for similar assets and liabilities in active or inactive markets or that are observable for the asset or liability either directly or indirectly; and
- Level 3: Unobservable inputs that are supported by little or no market activity.

Aytu's assets and liabilities which are measured at fair value are classified in their entirety based on the lowest level of input that is significant to their fair value measurement. Aytu's policy is to recognize transfers in and/or out of fair value hierarchy as of the date in which the event or change in circumstances caused the transfer. Aytu has consistently applied the valuation techniques discussed below in all periods presented.

The following table presents Aytu's financial liabilities that were accounted for at fair value on a recurring basis as of September 30, 2018 and June 30, 2018, by level within the fair value hierarchy.

	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	Total
<u>September 30, 2018</u>				
LIABILITIES				
Warrant derivative liability	\$ -	\$ -	\$ 47,000	\$ 47,000
Contingent consideration	\$ -	\$ -	\$ 4,470,000	\$ 4,470,000
<u>June 30, 2018</u>				
LIABILITIES				
Warrant derivative liability	\$ -	\$ -	\$ 94,000	\$ 94,000
Contingent consideration	\$ -	\$ -	\$ 4,694,000	\$ 4,694,000

The warrant derivative liability was valued using the lattice valuation methodology because that model embodies the relevant assumptions that address the features underlying these instruments. The warrants related to the warrant derivative liability are not actively traded and are, therefore, classified as Level 3 liabilities. Significant assumptions in valuing the warrant derivative liability, based on estimates of the value of Aytu common stock and various factors regarding the warrants, were as follows as of issuance and as of September 30, 2018:

	September 30, 2018	At issuance
<u>Warrants:</u>		
Volatility	169.1%	188.0%
Equivalent term (years)	3.88	5.00
Exercise premium	5%	20%
Risk-free interest rate	2.91%	1.83%
Dividend yield	0.00%	0.00%

The following table sets forth a reconciliation of changes in the fair value of the derivative financial liabilities classified as Level 3 in the fair value hierarchy:

	Derivative Instruments
Balance as of June 30, 2018	\$ 94,000
Change in fair value included in earnings	(47,000)
Balance as of September 30, 2018	<u>\$ 47,000</u>

We classify our contingent consideration liability in connection with the acquisition of Natesto and ZolpiMist within Level 3 as factors used to develop the estimated fair value are unobservable inputs that are not supported by market activity. We estimate the fair value of our contingent consideration liability based on projected payment dates, discount rates, probabilities of payment, and projected revenues. Projected contingent payment amounts are discounted back to the current period using a discounted cash flow methodology.

The following table sets forth a summary of changes in the contingent consideration for the period ended September 30, 2018:

	Contingent Consideration
Balance as of June 30, 2018	\$ 4,694,000
Increase due to accretion	76,000
Decrease due to contractual payment	(300,000)
Balance as of September 30, 2018	<u>\$ 4,470,000</u>



## Note 7 – Commitments and Contingencies

Commitments and contingencies are described below and summarized by the following as of September 30, 2018:

	Total	2019	2020	2021	2022	2023	Thereafter
Prescription database	\$ 625,000	\$ 625,000	\$ -	\$ -	\$ -	\$ -	\$ -
Natesto	2,500,000	-	-	-	-	2,500,000	-
Supply order	188,000	188,000	-	-	-	-	-
Office lease	227,000	91,000	109,000	27,000	-	-	-
	<u>\$ 3,540,000</u>	<u>\$ 904,000</u>	<u>\$ 109,000</u>	<u>\$ 27,000</u>	<u>\$ -</u>	<u>\$ 2,500,000</u>	<u>\$ -</u>

### Prescription Database

In May 2016, Aytu entered into an agreement with a vendor that will provide Aytu with prescription information. Aytu agreed to pay approximately \$1.9 million over three years for access to the database of prescriptions written for Natesto. The payments have been broken down into quarterly payments.

### Natesto

In April 2016, the Company entered into an agreement with Acerus, whereby Aytu is required to make milestone payments to Acerus. The first milestone payment of \$2.5 million must be paid even if the milestone is not reached.

### Supply Order

In June 2018, Aytu submitted a purchase order for a commercial supply of ZolpiMist, which is expected to arrive in fiscal 2019. (see Note 10)

### Office Lease

In June 2015, Aytu entered into a 37-month operating lease for office space in Raleigh, North Carolina. This lease had initial base rent of \$3,000 a month, with total base rent over the term of the lease of approximately \$112,000. In June 2018, the Company entered into a 12-month operating lease, beginning on August 1, 2018, for a new office space in Raleigh. This lease has base rent of \$1,100 a month, with total rent over the term of the lease of approximately \$13,200. In September 2015, the Company entered into a 37-month operating lease in Englewood, Colorado. This lease had an initial base rent of \$9,000 a month with a total base rent over the term of the lease of approximately \$318,000. In October 2017, the Company signed an amendment to the 37-month operating lease in Englewood, Colorado, extending the lease for an additional 24 months beginning October 1, 2018. The base rent remained \$9,000 a month. The Company recognizes rent expense on a straight-line basis over the term of each lease. Differences between the straight-line net expenses on rent payments are classified as liabilities between current deferred rent and long-term deferred rent. Rent expense for the respective periods was as follows:

	Three Months Ended September 30,	
	2018	2017
Rent expense	\$ 32,000	\$ 35,000

## Note 8 – Common Stock

At September 30, 2018 and June 30, 2018, Aytu had 1,801,411 and 1,794,762 common shares outstanding, respectively, and no preferred shares outstanding. The Company has 100 million shares of common stock authorized with a par value of \$0.0001 per share and 50 million shares of preferred stock authorized with a par value of \$0.0001 per share, of which 500 are designated Series A Convertible Preferred Stock, 161 are designated as Series B Convertible Preferred Stock, and 8,342,993 are designated as Series C Convertible Preferred Stock. Included in the common stock outstanding are 37,890 shares of restricted stock issued to executives, directors, employees and consultants.

## Note 9 – Equity Instruments

### Share-based Compensation Plans

On June 1, 2015, Aytu's stockholders approved the Aytu BioScience 2015 Stock Option and Incentive Plan (the "2015 Plan"), which, as amended in July 2017, provides for the award of stock options, stock appreciation rights, restricted stock and other equity awards for up to an aggregate of 3.0 million shares of common stock. The shares of common stock underlying any awards that are forfeited, canceled, reacquired by Aytu prior to vesting, satisfied without any issuance of stock, expire or are otherwise terminated (other than by exercise) under the 2015 Plan will be added back to the shares of common stock available for issuance under the 2015 Plan. As of September 30, 2018, we have 2,961,863 shares that are available for grant under the 2015 Plan.

Pursuant to the 2015 Stock Plan, 3.0 million shares of the Company's common stock, are reserved for issuance. The fair value of options granted has been calculated using the Black-Scholes option pricing model. In order to calculate the fair value of the options, certain assumptions are made regarding components of the model, including the estimated fair value of the underlying common stock, the risk-free interest rate, volatility, expected dividend yield and the expected option life. Changes to the assumptions could cause significant adjustments to valuation. Aytu estimates the expected term of granted options based on the average of the vesting term and the contractual term of the options. The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of the grant for treasury securities of similar maturity. There were no issuances during the three months ended September 30, 2018, therefore, no assumptions are used for this quarter.

Stock option activity is as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years
Outstanding June 30, 2018	1,798	\$ 325.97	6.95
Granted	-	\$ -	
Exercised	-	\$ -	
Forfeited/Cancelled	(11)	\$ 328.00	
Outstanding September 30, 2018	1,787	\$ 325.96	6.74
Exercisable at September 30, 2018	1,516	\$ 325.59	6.62

As of September 30, 2018, there was \$95,000 of total unrecognized option-based compensation expense related to non-vested stock options. The Company expects to recognize this expense over a weighted-average period of 0.77 years.

Restricted stock activity is as follows:

	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Life in Years
Unvested at June 30, 2018	37,200	\$ 39.80	9.4
Vested	(850)	\$ 40.40	
Granted	-	\$ -	
Cancelled	-	\$ -	
Unvested at September 30, 2018	<u>36,350</u>	<u>\$ 39.81</u>	<u>9.1</u>

As of September 30, 2018, there was \$2,861,000 of total unrecognized share-based compensation expense related to the non-vested restricted stock. The Company expects to recognize this expense over a weighted-average period of 8.38 years. Under the 2015 Plan, there was \$1,315,000 of total unrecognized share-based compensation expense related to the non-vested restricted stock. The Company expects to recognize this expense over a weighted-average period of 9.10 years. During the three months ended September 30, 2018, the expense related to these awards was \$36,000.

Aytu previously issued 1,540 shares of restricted stock outside the Aytu BioScience 2015 Stock Option and Incentive Plan, which vest in July 2026. The unrecognized expense related to these shares was \$1,546,000 as of September 30, 2018 and will be recognized over the 10-year vesting period, of which 7.78 years remain. During the three months ended September 30, 2018, the expense related to these awards was \$50,000.

Stock-based compensation expense related to the fair value of stock options and restricted stock was included in the statements of operations as selling, general and administrative expenses as set forth in the table below:

	Three Months Ended September 30,	
	2018	2017
Selling, general and administrative:		
Stock options	\$ 66,000	\$ 195,000
Restricted Stock	86,000	72,000
Total share-based compensation expense	<u>\$ 152,000</u>	<u>\$ 267,000</u>

## Warrants

A summary of all warrants is as follows:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years
Outstanding June 30, 2018	1,882,661	\$ 25.94	4.61
Issued	-		
Exercised	-		
Outstanding September 30, 2018	1,882,661	\$ 25.94	4.36

The warrants related to the August Financing issued in fiscal 2018 were valued using the lattice option pricing model. These warrants were accounted for as liability warrants (see assumptions used in Note 6).

## Note 10 – Related Party Transactions

### Executive Stock Purchases

Two Aytu executive officers, Joshua Disbrow and Jarrett Disbrow, participated in the August 2017 offering. Each officer purchased 4,167 units.

Three Aytu executive officers, Joshua Disbrow, Jarrett Disbrow and David Green, participated in the March 2018 offering. Joshua Disbrow and Jarrett Disbrow each purchased 11,306 units. Mr. Green purchased 3,330 units.

### Co-Pay Support

In June 2018, the Company entered into a master services agreement with TrialCard Incorporated ("TCI"), a vendor selected to support the Company sponsored co-pay program. In supporting the program, TCI will make disbursements to qualified patients presenting valid prescriptions for Natesto and ZolpiMist on behalf of Aytu. Disbursements will be based upon business rules determined by Aytu. The Company agreed to pay fees monthly to TCI for account management, data analytics, implementation, and technology and to reimburse TCI for certain direct costs incurred by TCI to support the Company's program. Expenses are expected to be approximately \$19,000 per month based on volumes and performance of our program. During the quarter ended September 30, 2018, the fees we paid to TCI is \$254,000. One of the Aytu directors, Mr. Donofrio, is an executive officer of TCI and has no direct interest in the arrangement.

## Note 11 – Subsequent Events

On October 9, 2018, we closed an underwritten public offering, with total gross proceeds of \$15.2 million which includes the full exercise of the underwriters' over-allotment option to purchase additional shares and warrants, before deducting underwriting discounts, commissions and other offering expenses payable by the Company.

The securities offered by the Company consist of (i) an aggregate of 457,007 shares of its Common Stock, (ii) an aggregate of 8,342,993 shares of its Series C Convertible Preferred Stock convertible into an aggregate of 8,342,993 shares of Common Stock at a conversion price of \$1.50 per share, and (iii) Warrants to purchase an aggregate of 8,800,000 shares of Common Stock at an exercise price of \$1.50 per share. The securities were issued at a public offering purchase price of \$1.50 per fixed combination of (a) one share of Common Stock and one Warrant or (b) one share of Series C Preferred Stock and one Warrant. Each share of Series C Preferred Stock is convertible into one share of Common Stock. The Warrants are exercisable upon issuance and will expire five years from the date of issuance. The conversion price of the Series C Preferred Stock in the offering as well as the exercise price of the Warrants are fixed and do not contain any variable pricing features, or any price based anti-dilution features.

In connection with this offering, the underwriters have exercised their over-allotment option in full and purchased an additional 1,320,000 shares of Common Stock and 1,320,000 Warrants.

On October 17, 2018, we made a payment in the amount of \$188,000 to purchase a commercial supply of ZolpiMist.

On October 24, 2018, Aytu issued 2.7 million shares of restricted stock to executives, directors and employees pursuant to the 2015 Plan, which vest in October 2028 and have a fair value of \$3.5 million.

In November, the Company's entry into the \$3 billion cough and cold market with an exclusive license of FDA-approved Tuzistra® XR from Tris Pharma. Along with Tuzistra XR, the Company has licensed a complementary antitussive product pending FDA approval. As part of this transaction, the Company also plans to enter into a strategic financing with Armistice Capital, LLC for up to \$5 million in the form of a three-year note, secured by the Tuzistra revenue streams.

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

*This discussion should be read in conjunction with Aytu BioScience, Inc.'s Annual Report on Form 10-K for the year ended June 30, 2018, filed on September 6, 2018. The following discussion and analysis contains forward-looking statements that involve risks and uncertainties. Actual results could differ materially from those projected in the forward-looking statements. For additional information regarding these risks and uncertainties, please see the risk factors included in Aytu's Form 10-K filed with the Securities and Exchange Commission on September 6, 2018.*

### Overview, Liquidity and Capital Resources

Aytu is an emerging specialty pharmaceutical company focused on commercializing novel products that address significant medical needs. Aytu is focused on commercializing products that address hypogonadism (low testosterone), insomnia, and male infertility and plans to expand into other therapeutic areas as the company continues to execute on its growth plans.

On October 9, 2018, we closed an underwritten public offering, with total gross proceeds of \$15.2 million which includes the full exercise of the underwriters' over-allotment option to purchase additional shares and warrants, before deducting underwriting discounts, commissions and other offering expenses payable by the Company.

The securities offered by the Company consist of (i) an aggregate of 457,007 shares of its Common Stock, (ii) an aggregate of 8,342,993 shares of its Series C Convertible Preferred Stock convertible into an aggregate of 8,342,993 shares of Common Stock at a conversion price of \$1.50 per share, and (iii) Warrants to purchase an aggregate of 8,800,000 shares of Common Stock at an exercise price of \$1.50 per share. The securities were issued at a public offering purchase price of \$1.50 per fixed combination of (a) one share of Common Stock and one Warrant or (b) one share of Series C Preferred Stock and one Warrant. Each share of Series C Preferred Stock is convertible into one share of Common Stock. The Warrants are exercisable upon issuance and will expire five years from the date of issuance. The conversion price of the Series C Preferred Stock in the offering as well as the exercise price of the Warrants are fixed and do not contain any variable pricing features, or any price based anti-dilution features.

In connection with this offering, the underwriters exercised their over-allotment option in full and purchased an additional 1,320,000 shares of Common Stock and 1,320,000 Warrants.

Prior to the date of this Report, we have financed operations through a combination of private and public debt and equity financings, funds from the sale of our products, and occasionally through divestitures of non-strategic assets. Our financing transactions have included private placements of stock and convertible notes, and public offerings of the Company's equity securities. Since the formation of Aytu in June 2015, the Company has raised approximately \$65.1 million from the sale of its securities to investors and the exercise of warrants by investors. Although it is difficult to predict our liquidity requirements, based upon our current operating plan, as of the date of this Report, we believe we will have sufficient cash to meet our projected operating requirements for fiscal 2019.

We have incurred accumulated net losses since inception, and at September 30, 2018, we had an accumulated deficit of \$82.7 million. Our net loss was \$3.4 million for the three months ended September 30, 2018 and we used \$2.7 million in cash from operations during the three months ended September 30, 2018.

We are a relatively young company with substantial revenue growth expectations as demonstrated by the nearly 55% quarter-over-quarter net revenue growth for the three months ended September 30, 2018. Our primary activities are focused on commercializing our approved product portfolio, including Natesto and ZolpiMist, building our commercial infrastructure, improving patient access, and improving the effectiveness and reach of our sales force. As of September 30, 2018, we had cash, cash equivalents and restricted cash totaling \$4.1 million and other current assets with an aggregate balance of \$2.8 million available to fund our operations, offset by an aggregate of \$2.5 million in accounts payable and accrued liabilities. In October 2018, we raised gross proceeds of \$15.2 million in a public offering.

Based on our recent trend of increasing revenue, and management's operating strategy and plans for accelerating revenue growth, we believe that our sales will continue to grow. We also believe that our efforts and programs designed to eliminate couponing and reduce discounting of Natesto will combine to increase net revenue and therefore reduce the rate of cash use. We expect to maintain operating expenses at levels comparable to the quarter ended September 30, 2018. With these assumptions and the additional capital we raised in October, we believe that we have sufficient cash resources to fund operations into the first half of fiscal 2020, after which time we could require additional new capital if our revenue does not continue to grow as we have projected. If, in the judgment of management, capital becomes available on terms that we consider to be in the best interest of the Company, we may seek to raise additional capital even if the need for additional capital is not imminent. If we cannot raise adequate additional capital in the future if and when we require it, we could be required to delay, reduce the scope of, or eliminate one or more of our commercialization efforts, or our research and development programs. We may also be required to relinquish some or all rights to product candidates at less favorable terms than we would otherwise choose. This may lead to impairment or other charges, which could materially affect our balance sheet and operating results. However, we can provide no assurance that our revenues will increase as anticipated or that additional funding will be available to us on terms acceptable to us, or at all.

## **ACCOUNTING POLICIES**

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

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of the consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments, including those related to recoverability and useful lives of long-lived assets, stock compensation, valuation of derivative instruments, allowances, contingencies and going concern. Management bases its estimates and judgments on historical experience and on various other factors that the Company believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The methods, estimates, and judgments used by us in applying these critical accounting policies have a significant impact on the results we report in our consolidated financial statements. Our significant accounting policies and estimates are included in our Annual Report on Form 10-K for the fiscal year ended June 30, 2018, filed with the SEC on September 6, 2018.

Information regarding our accounting policies and estimates can be found in the Notes to the consolidated Financial Statements.

## **Newly Issued Accounting Pronouncements**

Information regarding the recently issued accounting standards (adopted and pending adoption as of September 30, 2018) is combined in Note 1 to the consolidated financial statements.

## **RESULTS OF OPERATIONS**

### **Results of Operations – Three and nine months ended September 30, 2018 compared to September 30, 2017**

Results of operations for the three months ended September 30, 2018 and the three months ended September 30, 2017 reflected losses of approximately \$3.4 million and \$4.2 million, respectively. These losses include, in part, non-cash charges related to stock-based compensation, depreciation, amortization and accretion, issuance of restricted stock, and derivative income in the amount of \$662,000 for the three months ended September 30, 2018 and \$621,000 for the three months ended September 30, 2017, respectively. The non-cash charges increased in the three months ended September 30, 2018 primarily due to the issuance of restricted stock offset by warrant derivative income.

### ***Revenue***

#### *Product revenue*

We recognized net revenue from product sales of \$1.4 million and \$1.1 million for the three months ended September 30, 2018 and 2017 respectively. Our product portfolio includes Natesto, ZolpiMist, ProstaScint, Fiera, and the MiOXSYS and RedoxSYS Systems, but the majority of our revenue comes from Natesto sales. Revenue from Natesto increased 44% in the first quarter of fiscal 2019 compared to the same quarter in fiscal 2018.



As is customary in the pharmaceutical industry, our gross product sales are subject to a variety of deductions in arriving at reported net product sales. Provisions for these deductions are recorded concurrently with the recognition of gross product revenue and include coupons, discounts, chargebacks, distributor fees, processing fees, as well as allowances for returns and Medicaid rebates. Provision deductions relating to estimated amounts payable to direct customers are netted against accounts receivable and balances relating to indirect customers are included in accounts payable and accrued liabilities. The provisions recorded to reduce gross product sales to net product sales are as follows:

	Three Months Ended September 30,	
	2018	2017
Gross product revenue	\$ 2,320,000	\$ 2,243,000
Provisions to reduce gross product sales to net product sales	(888,000)	(1,167,000)
Net product revenue	<u>\$ 1,432,000</u>	<u>\$ 1,076,000</u>
Percentage of gross sales to net sales	61.7%	48.0%

## **Expenses**

### **Cost of Sales**

The cost of sales of \$411,000 and \$287,000 recognized for the three months ended September 30, 2018 and 2017, respectively, are related to Natesto, ZolpiMist, ProstaScint, Fiera and the MiOXSYS and RedoxSYS Systems. We expect cost of sales to increase in the future due to and in line with growth in revenue from product sales.

### **Research and Development**

Research and development costs consist of clinical trials and sponsored research which includes manufacturing development, and consultants and other. These costs relate solely to research and development without an allocation of general and administrative expenses and are summarized as follows:

	Three Months Ended September 30,	
	2018	2017
Clinical trials and sponsored research	120,000	140,000
Consultants and other	36,000	1,000
	<u>\$ 156,000</u>	<u>\$ 141,000</u>

### **Comparison of Three Months Ended September 30, 2018 and 2017**

Research and development expenses increased \$15,000, or 10.6%, for the three months ended September 30, 2018 compared to the three months ended September 30, 2017. The increase was due primarily to the use of additional consultants related to the RedoxSYS and MiOXSYS Systems. We anticipate research and development expense to increase in fiscal 2019 as we anticipate funding a study to further support the clinical application of our MiOXSYS System, and to fund further clinical studies for Natesto to potentially support new claims and/or to comply with FDA post-marketing study requirements.

### ***Selling, General and Administrative***

Selling, general and administrative expenses consist of labor costs, including personnel costs for employees in executive, commercial, business development and operational functions; stock-based compensation; patents and intellectual property; professional fees including legal, auditing, accounting, investor relations, shareholder expense and printing and filing of SEC reports; occupancy, travel and other expenses including rent, governmental and regulatory compliance, insurance, and professional subscriptions; and directors fees. These costs are summarized as follows:

	<b>Three Months Ended September 30,</b>	
	<b>2018</b>	<b>2017</b>
Labor	\$ 2,281,000	\$ 2,400,000
Stock-based compensation	152,000	267,000
Patent costs	53,000	128,000
Professional fees	142,000	419,000
Occupancy, travel and other	908,000	1,364,000
Directors Fees	40,000	40,000
Sales & marketing - related party	254,000	-
	<u>\$ 3,830,000</u>	<u>\$ 4,618,000</u>

### ***Comparison of Three Months Ended September 30, 2018 and 2017***

Selling, general and administrative costs decreased \$788,000, or 17.1%, for the three months ended September 30, 2018, compared to the three months ended September 30, 2017. The primary decrease was due to professional fees and occupancy, travel and other, which included a refund of PDUFA fees waived by the FDA in August 2018. This decrease was offset by sales & marketing-related party, compared to fiscal 2018, due to fees paid to TrialCard Incorporation. We expect selling, general and administrative expenses to be approximately flat for the remainder of fiscal 2019.

### ***Amortization of Intangible Assets***

Amortization of intangible assets was \$452,000 for the three months ended September 30, 2018, and \$386,000 for the three months ended September 30, 2017. This expense increased due to amortization of the related finite-lived intangible assets. We expect this expense to remain flat for the remainder of 2019.

### ***Net Cash Used in Operating Activities***

During the three months ended September 30, 2018, our operating activities used \$2.7 million in cash. The decline in cash use resulted from higher revenue and lower operating expense for first quarter in fiscal 2019. Our cash use was a result of an increase in accrued liabilities and accrued compensation expense, with the recognition of non-cash expenses such as depreciation, amortization and accretion and stock-based compensation expense. These were offset by derivative income, an increase in accounts receivable and prepaid expenses

During the three months ended September 30, 2017, our operating activities used \$4.2 million in cash, which was approximately the same as the net loss of \$4.2 million, primarily as a result of the non-cash depreciation, amortization and accretion, derivative income and stock-based compensation offset by a decrease in accounts payable and an increase in accounts receivable.

**Net Cash Used in Investing Activities**

During the three months ended September 30, 2018, we used \$306,000 of cash for investing activities to purchase fixed and operating assets and received a \$3,000 refund of our deposit for office space.

During the three months ended September 30, 2017, we used zero cash in investing activities.

**Net Cash from Financing Activities**

Net cash provided by financing activities in the three months ended September 30, 2018 was zero.

Net cash provided by financing activities in the three months ended September 30, 2017 of \$10.4 million was primarily related to the private offering of \$11.8 million, offset by the cash offering cost of \$1.4 million.

**Off Balance Sheet Arrangements**

We do not have off-balance sheet arrangements, financings, or other relationships with unconsolidated entities or other persons, also known as “variable interest entities.”

**Contractual Obligations and Commitments**

Information regarding our Contractual Obligations and Commitments is contained in Note 7 to the Financial Statements.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

We are not currently exposed to material market risk arising from financial instruments, changes in interest rates or commodity prices, or fluctuations in foreign currencies. We have not identified a need to hedge against any of the foregoing risks and therefore currently engages in no hedging activities.

**Item 4. Controls and Procedures.**

As of the end of the period covered by this Quarterly Report on Form 10-Q, an evaluation was carried out by our management, with the participation of the Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures, as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Based on such evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and are operating in an effective manner.

**Changes in Internal Control over Financial Reporting**

There were no changes in our internal controls over financial reporting that occurred during the last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings.

We are currently not a party to any material pending legal proceedings.

### Item 1A. Risk Factors.

There have been no material changes to the discussion of risk factors included in our most recent Annual Report on Form 10-K.

### Item 2. Unregistered Sales of Securities and Use of Proceeds.

None.

### Item 3. Defaults Upon Senior Securities.

None.

### Item 4. Mine Safety Disclosures.

Not Applicable.

### Item 5. Other Information.

On November 2, 2018, the Company entered into a License, Development, Manufacturing and Supply Agreement (the "Tris License Agreement") with TRIS Pharma, Inc. ("TRIS"). Pursuant to the Tris License Agreement, TRIS granted to the Company an exclusive license in the United States related to Tuzistra XR. In addition, TRIS has agreed to an exclusive license in the United States related to a complementary antitussive referred to as "CCP-08" (together with Tuzistra XR, the "Products") for which marketing approval has been sought by TRIS under a New Drug Application filed with the FDA. As consideration for the license granted, the Company made an upfront cash payment to TRIS and also issued to TRIS shares of Series D Convertible Preferred Stock. Additionally, the Company will pay TRIS certain royalty fees through the term for Tuzistra XR and CCP-08. The Agreement may be terminated by either the Company or TRIS on the occurrence of a material breach of the Agreement and will terminate according to its terms upon expiration of the final royalty payment made to TRIS.

As consideration to TRIS for entering into the Tris License Agreement, the Company issued to TRIS 400,000 shares of Series D Convertible Preferred Stock ("Series D Preferred Stock") in a private placement under Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"). The preferences and rights of the Series D Preferred Stock are as set forth in a Certificate of Designation (the "Certificate of Designation") attached as Exhibit 4.1. The material terms of the Series D Preferred Stock are disclosed below.

Conversion. Each share of Series D Preferred Stock is convertible at any time at the holder's option into one share of common stock, which conversion ratio is subject to adjustment for stock splits, stock dividends, distributions, subdivisions and combinations. Notwithstanding the foregoing, the Certificate of Designation provides that the Company shall not effect any conversion of the Series D Preferred Stock, with certain exceptions, to the extent that, after giving effect to an attempted conversion, the holder of Series C Preferred Stock (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 a number of shares of the common stock of the Company ("Common Stock") in excess of 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of the shares of Common Stock then outstanding after giving effect to such exercise.

**Fundamental Transaction.** In the event the Company consummates a merger or consolidation with or into another person or other reorganization event in which the Common Stock is converted or exchanged for securities, cash or other property, or the Company sells, leases, licenses, assigns, transfers, conveys or otherwise disposes of all or substantially all of the Company's assets or the Company or another person acquires 50% or more of the Company's outstanding shares of Common Stock, then following such event, the holders of the Series D Preferred Stock will be entitled to receive upon conversion of such Series D Preferred Stock the same kind and amount of securities, cash or property which the holders would have received had they converted their Series D Preferred Stock immediately prior to such fundamental transaction. Any successor to the Company or surviving entity shall assume the obligations under the Series D Preferred Stock.

**Liquidation Preference.** In the event of a liquidation, the holders of Series D Preferred Stock will be entitled to participate on an as-converted-to-common-stock basis with holders of Common Stock in any distribution of assets of the Company to the holders of Common Stock.

**Voting Rights.** With certain exceptions, as described in the Certificate of Designation, the Series D Preferred Stock has no voting rights. However, as long as any shares of Series D Preferred Stock remain outstanding, the Certificate of Designation provides that the Company shall not, without the affirmative vote of holders of a majority of the then-outstanding shares of Series D Preferred Stock: (a) alter or change adversely the powers, preferences or rights given to the Series D Preferred Stock or alter or amend the Series D Certificate of Designation, (b) amend the Company's certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of Series D Preferred Stock, (c) increase the number of authorized shares of Series D Preferred Stock or (d) effect a stock split or reverse stock split of the Series D Preferred Stock or any like event.

**Dividends.** The Certificate of Designation provides, among other things, that the Company shall not pay any dividends on shares of Common Stock (other than dividends in the form of Common Stock) unless and until such time as the Company pays dividends on each share of Series D Preferred Stock on an as-converted basis. Other than as set forth in the previous sentence, the Certificate of Designation provides that no other dividends shall be paid on shares of Series D Preferred Stock and that the Company shall pay no dividends (other than dividends in the form of Common Stock) on shares of Common Stock unless the Company simultaneously complies with the previous sentence.

**Repurchase Restrictions.** The Certificate of Designation does not provide for any restriction on the repurchase of Series D Preferred Stock by the Company while there is any arrearage in the payment of dividends on the Series D Preferred Stock. There will be no sinking fund provisions applicable to the Series D Preferred Stock.

**Redemption.** The Company will not be obligated to redeem or repurchase any shares of Series D Preferred Stock. Shares of Series D Preferred Stock will not otherwise be entitled to any redemption rights or mandatory sinking fund or analogous fund provisions.

**Exchange Listing.** The Series D Preferred Stock is not listed on any securities exchange or other trading system.

## Item 6. Exhibits.

Exhibit Number	Description
3.1	<a href="#">Form of Certificate of Designation of Preferences, Rights and Limitations of Series D Preferred Stock filed on November 1, 2018.</a>
31.1	<a href="#">Certificate of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certificate of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1	<a href="#">Certificate of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*.</a>
101	XBRL (eXtensible Business Reporting Language). The following materials from Aytu BioScience, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 formatted in XBRL: (i) the Consolidated Balance Sheet, (ii) the Consolidated Statement of Operations, (iii) the Consolidated Statement of Stockholders' Equity (Deficit), (iv) the Consolidated Statement of Cash Flows, and (v) the Consolidated Notes to the Financial Statements.

\* The certification attached as Exhibit 32.1 accompanying this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, shall not be deemed "filed" by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

## SIGNATURES

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

AYTU BIOSCIENCE, INC.

By: /s/ Joshua R. Disbrow

**Joshua R. Disbrow**  
**Chief Executive Officer**  
**(principal executive officer)**  
**Date: November 7, 2018**

By: /s/ David A. Green

**David A. Green**  
**Chief Financial Officer**  
**(principal financial and accounting officer)**  
**Date: November 7, 2018**

## AYTU BIOSCIENCE, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES D CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW

The undersigned, Joshua R. Disbrow and David A. Green, do hereby certify that:

1. They are the President and Secretary, respectively, of Aytu BioScience, Inc., a Delaware corporation (the "Corporation").
2. The Corporation is authorized to issue 50,000,000 shares of preferred stock, 8,356,209 of which have been issued.
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 50,000,000 shares, \$0.0001 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 400,000 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).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(d).

"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.

"Buy-In" shall have the meaning set forth in Section 6(c)(iv).

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, par value \$0.0001 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(b).

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

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

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



"GAAP" means United States generally accepted accounting principles.

"Holder" shall have the meaning given such term in Section 2.

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

"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.

"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(c).

"Stated Value" shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

"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 American, 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).

"Transfer Agent" means VStock Transfer LLC, the current transfer agent of the Corporation with a mailing address of 18 Lafayette Place, Woodmere, New York 11598 and a facsimile number of (646) 536-3179, and any successor transfer agent of the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series D Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 400,000 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders"). Each share of Preferred Stock shall have a par value of \$0.0001 per share and a stated value equal to \$1.1223, subject to increase set forth in Section 3 below (the "Stated Value"). Unless otherwise requested by the Holder, the Preferred Stock will initially be issued by delivery of one or more physical Preferred Stock certificates. As between the Corporation and a beneficial owner of Preferred Stock, such beneficial owner of Preferred Stock shall have all of the rights and remedies of a Holder hereunder.

Section 3. Dividends. Except for stock dividends or distributions for which adjustments are to be made pursuant to Section 7, Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis, disregarding for such purpose any conversion limitations hereunder) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Preferred Stock. The Corporation shall not pay any dividends on the Common Stock unless the Corporation simultaneously complies with this provision.

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 the same amount that a holder of Common Stock would receive if the Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to Common Stock which amounts shall be paid pari passu with all holders of Common Stock. 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) Conversions at Option of Holder. 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, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d)) 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 or e-mail such Notice of Conversion to the Corporation (such date, 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.

b) Conversion Price. The conversion price for the Preferred Stock shall equal \$1.1223, subject to adjustment herein (the "Conversion Price").

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion 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, and (B) a bank check in the amount of accrued and unpaid dividends, if any. Unless the Holder requests otherwise, the Corporation shall use its best efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Corporation's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

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 Notice of Conversion.

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.

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(c)(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(c)(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 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 be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock. 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 round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Preferred Stock.

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.

d) 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 (such Persons, "Attribution Parties")) 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 and Attribution Parties 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 or Attribution Parties 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) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), 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(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) 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 Attribution Parties) 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(d), 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 (which may be via email) of a Holder, the Corporation shall within one Trading Day 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 or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any shares of Preferred Stock, 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 notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) 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(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation 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.

#### 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 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 Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, 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 grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes 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 conversion of this Preferred Stock (without regard to any limitations on conversion 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 immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) 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(d) 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 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, 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 and, 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 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 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 by facsimile or email 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 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 by facsimile or email to each Holder at its last facsimile number or email 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, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth on its most recent current or periodic report (on Form 10-K, Form 10-Q or Form 8-K, as the case may be) filed with the Commission, Attention: Controller, facsimile number (720) 437-6527, e-mail address ecreason@aytubio.com, or such other facsimile number, e-mail address 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, e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Corporation. 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 or e-mail at the e-mail address set forth in this Section 8 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 or e-mail at the e-mail address 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, and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

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. All legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, 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"). The Corporation and each Holder 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, 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. The Corporation and each Holder 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. The Corporation and each Holder 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 the Corporation or any Holder 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. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D 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 1st day of November 2018.

/s/ Joshua R. Disbrow  
\_\_\_\_\_  
Name: Joshua R. Disbrow  
Title: CEO

/s/ David A. Green  
\_\_\_\_\_  
Name: David A. Green  
Title: Secretary

**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 D Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of Aytu BioScience, 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. 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: \_\_\_\_\_

**AYTU BIOSCIENCE, INC.**  
**Certification by Chief Executive Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Joshua R. Disbrow, certify that:

1. I have reviewed this report on Form 10-Q of Aytu BioScience, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a—15(e) and 15d—15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a—15(f) and 15d—15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2018

By: /s/ Joshua R. Disbrow  
**Joshua R. Disbrow**  
 Title: **Chief Executive Officer**

**AYTU BIOSCIENCE, INC.**  
**Certification by Chief Financial Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, David A. Green, certify that:

1. I have reviewed this report on Form 10-Q of Aytu BioScience, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a—15(e) and 15d—15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a—15(f) and 15d—15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2018

By: /s/ David A. Green  
**David A. Green**  
 Title: **Chief Financial Officer**

**AYTU BIOSCIENCE, INC.****Certification Pursuant to 18 U.S.C. Section 1350, as Adopted****Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the filing of the quarterly report on Form 10-Q for the quarter ended September 30, 2018 (the "Report") by Aytu BioScience, Inc. (the "Company"), each of the undersigned hereby certifies that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2018

/s/ Joshua R. Disbrow

**Joshua R. Disbrow**  
**Chief Executive Officer**

Dated: November 7, 2018

/s/ David A. Green

**David A. Green**  
**Chief Financial Officer**