

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

AYTU BIOSCIENCE, INC

Form: 10-Q

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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: December 31, 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	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for 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 February 6, 2019, there were 12,390,435 shares of Common Stock outstanding.

**AYTU BIOSCIENCE, INC. AND SUBSIDIARY
FOR THE QUARTER ENDED DECEMBER 31, 2018**

INDEX

	Page
PART I—FINANCIAL INFORMATION	
Item 1. Consolidated Financial Statements	1
Consolidated Balance Sheets as of December 31, 2018 (unaudited) and June 30, 2018	1
Consolidated Statements of Operations for the three and six months ended December 31, 2018 (unaudited) and the three and six months ended December 31, 2017 (unaudited)	2

Consolidated Statement of Stockholders' Equity (unaudited)	3
Consolidated Statements of Cash Flows for the six months ended December 31, 2018 (unaudited) and the six months ended December 31, 2017 (unaudited)	4
Notes to Consolidated Financial Statements (unaudited)	5
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	16
Item 3. Quantitative and Qualitative Disclosures About Market Risk	20
Item 4. Controls and Procedures	20
PART II—OTHER INFORMATION	
Item 1. Legal Proceeding	21
Item 1A. Risk Factors	21
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	21
Item 3. Defaults Upon Senior Securities	21
Item 4. Mine Safety Disclosures	21
Item 5. Other Information	21
Item 6. Exhibits	21
SIGNATURES	26

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; anticipated sales increases; anticipated net revenue increases; the anticipated arrival dates of certain supply orders; the expected recognition and amounts of certain future expenses and costs of goods sold; anticipated increases to operating expenses, research and development expenses, and selling , general, and administrative expenses; director appointment to fill a current board of director vacancy; 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, Tuzistra XR, 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

	December 31, 2018 (unaudited)	June 30, 2018
Assets		
Current assets		
Cash and cash equivalents	\$ 17,804,887	\$ 7,012,527
Restricted cash	100,225	100,000
Accounts receivable, net	1,482,490	578,782
Inventory, net	1,644,861	1,338,973
Prepaid expenses and other	944,766	440,009
Total current assets	<u>21,977,229</u>	<u>9,470,291</u>
Fixed assets, net	186,944	218,684
Licensed assets, net	19,999,550	11,120,086
Patents, net	233,278	245,944
Deposits	2,200	5,088
Total long-term assets	<u>20,421,972</u>	<u>11,589,802</u>
Total assets	<u>\$ 42,399,201</u>	<u>\$ 21,060,093</u>
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable and other	\$ 2,371,785	\$ 2,119,672
Accrued liabilities	932,690	185,882
Accrued compensation	743,834	540,674
Current deferred revenue	13,990	-
Current deferred rent	-	1,450
Current contingent consideration	593,173	547,100
Total current liabilities	<u>4,655,472</u>	<u>3,394,778</u>
Long-term contingent consideration	12,783,710	4,146,829
Long-term debt	5,036,164	-
Warrant derivative liability	25,992	93,981
Total liabilities	<u>22,501,338</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 4,532,664 and 0, respectively as of December 31, 2018 and June 30, 2018	453	-
Common Stock, par value \$.0001; 100,000,000 shares authorized; shares issued and outstanding 10,504,769 and 1,794,762, respectively as of December 31, 2018 and June 30, 2018	1,050	179
Additional paid-in capital	107,258,097	92,681,918
Accumulated deficit	(87,361,737)	(79,257,592)
Total stockholders' equity	<u>19,897,863</u>	<u>13,424,505</u>
Total liabilities and stockholders' equity	<u>\$ 42,399,201</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 December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Product revenue, net	\$ 1,795,011	\$ 1,051,154	\$ 3,226,820	\$ 2,127,522
Operating expenses				
Cost of sales	525,138	385,411	936,097	672,612
Research and development	149,029	(277,486)	304,907	(136,532)
Selling, general and administrative	5,046,174	4,553,366	8,622,754	9,171,769
Selling, general and administrative - related party (Note 11)	91,337	-	345,046	-
Amortization and impairment of intangible assets	534,063	383,811	986,020	769,652
Total operating expenses	<u>6,345,741</u>	<u>5,045,102</u>	<u>11,194,824</u>	<u>10,477,501</u>
Loss from operations	<u>(4,550,730)</u>	<u>(3,993,948)</u>	<u>(7,968,004)</u>	<u>(8,349,979)</u>
Other (expense) income				
Other expense, net	(127,569)	(196,781)	(204,130)	(385,526)
Derivative income	20,637	518,051	67,989	817,785
Total other (expense) income	<u>(106,932)</u>	<u>321,270</u>	<u>(136,141)</u>	<u>432,259</u>
Net loss	<u>\$ (4,657,662)</u>	<u>\$ (3,672,678)</u>	<u>\$ (8,104,145)</u>	<u>\$ (7,917,720)</u>
Weighted average number of common shares outstanding	<u>6,477,004</u>	<u>205,663</u>	<u>4,183,591</u>	<u>124,056</u>
Basic and diluted net loss per common share	<u>\$ (0.72)</u>	<u>\$ (17.86)</u>	<u>\$ (1.94)</u>	<u>\$ (63.82)</u>

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

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

	Preferred Stock		Common Stock		Additional paid-in capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance - June 30, 2018	-	\$ -	1,794,762	\$ 179	\$92,681,918	\$79,257,592)	\$13,424,505
Stock-based compensation (unaudited)	-	-	-	-	106,671	-	106,671
Issuance of restricted stock (unaudited)	-	-	2,707,022	271	239,234	-	239,505
Common stock issued to employee (unaudited)	-	-	9,000	1	11,689	-	11,690
Issuance of preferred and common stock, net of \$1,479,963 in cash							
issuance costs (unaudited)	8,342,993	834	1,777,007	178	11,810,373	-	11,811,385
Warrants issued in connection with the registered offering (unaudited)	-	-	-	-	1,827,628	-	1,827,628
Warrants issued in connection with the registered offering to the placement agents, non-cash issuance costs (unaudited)	-	-	-	-	61,024	-	61,024
Preferred stocks issued in connection with the purchase of assets (unaudited)	400,000	40	-	-	519,560		519,600
Preferred stocks converted into common stock (unaudited)	(4,210,329)	(421)	4,210,329	421	-	-	-
Adjustment for rounding of shares due to stock split (unaudited)	-	-	6,649	-	-	-	-
Net loss (unaudited)	-	-	-	-	-	(8,104,145)	(8,104,145)
Balance - December 31, 2018 (unaudited)	<u>4,532,664</u>	<u>\$ 453</u>	<u>10,504,769</u>	<u>\$ 1,050</u>	<u>\$107,258,097</u>	<u>\$87,361,737</u>	<u>\$19,897,863</u>

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

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

	<u>Six Months Ended December 31,</u>	
	<u>2018</u>	<u>2017</u>
Cash flows from operating activities		
Net loss	\$ (8,104,145)	\$ (7,917,720)
Adjustments to reconcile net loss to cash used in operating activities		
Stock-based compensation expense	106,671	275,688
Issuance of restricted stock	239,505	103,635
Depreciation, amortization and accretion	1,230,671	1,315,063
Issuance of common stock to employee	11,690	-
Derivative (income)	(67,989)	(817,785)
Changes in operating assets and liabilities:		
(Increase) in accounts receivable	(903,708)	(849,397)
(Increase) in inventory	(305,888)	(67,585)
(Increase) in prepaid expenses and other	(504,757)	(454,595)
Increase in accounts payable and other	252,113	1,124,558
Increase (decrease) in accrued liabilities	746,808	(524,905)
Increase in accrued compensation	203,160	497,586
Increase in interest payable	36,164	-
Increase in deferred revenue	13,990	-
(Decrease) in deferred rent	(1,450)	(3,337)
Net cash used in operating activities	<u>(7,047,165)</u>	<u>(7,318,794)</u>
Cash flows used in investing activities		
Deposit	2,888	-
Purchases of property and equipment	(12,954)	(12,195)
Contingent consideration payment	(50,221)	-
Purchase of assets	(800,000)	-
Net cash used in investing activities	<u>(860,287)</u>	<u>(12,195)</u>
Cash flows from financing activities		
Issuance of preferred, common stock and warrants	15,180,000	11,839,995
Issuance costs related to preferred, common stock and warrants	(1,479,963)	(1,402,831)
Issuance of debt	5,000,000	-
Net cash provided by financing activities	<u>18,700,037</u>	<u>10,437,164</u>
Net change in cash, cash equivalents and restricted cash	10,792,585	3,106,175
Cash, cash equivalents and restricted cash at beginning of period	7,112,527	877,542
Cash, cash equivalents and restricted cash at end of period	<u>\$ 17,905,112</u>	<u>\$ 3,983,717</u>
Non-cash transactions:		
Fair value of warrants issued to investors and underwriters	\$ 1,888,652	\$ -
Issuance of preferred stock related to purchase of asset	\$ 519,600	\$ -
Contingent consideration	\$ 8,833,219	\$ -
Warrants issued to investors and underwriters (see Note 6)	\$ -	\$ 4,117,997
Revenue share payment to Jazz included in accounts payable	\$ -	\$ 7,385
Earn-out payment to Nuelle Shareholders in common stock	\$ -	\$ 250,000
Fixed assets included in accounts payable	\$ -	\$ 62,512

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 a specialty pharmaceutical company focused on commercializing novel products that address significant patient needs like hypogonadism (low testosterone), severe cough and respiratory symptoms, 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 and the results of operations and cash flows for the interim periods presented. The results of operations for the period ended December 31, 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 December 31, 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 the 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 previously disclosed upfront payments made to Acerus, we agreed to make one-time, non-refundable milestone payments to Acerus within 45 days of certain agreed upon 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 aggregate amortization expense for each of the three-month periods ended December 31, 2018 and 2017 was \$329,000. The aggregate amortization expense for each of the six-month periods ended December 31, 2018 and 2017 was \$659,000.

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 December 31, 2018 and 2017 was \$16,000, and \$169,000, respectively. The contingent consideration accretion expense for each of the six-month periods ended December 31, 2018 and 2017 was \$31,000, and \$330,000, respectively. As of December 31, 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 December 31, 2018 and 2017 was \$116,000 and \$0, respectively. The amortization expense for each of the six months ended December 31, 2018 and 2017 was \$232,000 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 is payable within 45 days of the end of the quarter during which the applicable net sales occur.

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 December 31, 2018 and 2017 was \$61,000, and \$0, respectively. The contingent consideration accretion expense for the six months ended December 31, 2018 and 2017 was \$120,000, and \$0, respectively.

License Development, Manufacturing and Supply Agreement—Tuzistra XR

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 the Company an exclusive license in the United States related to Tuzistra XR. In addition, TRIS has agreed to grant the Company 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 Product’s license grant, the Company (i) made an upfront cash payment to TRIS; (ii) issued to TRIS shares of Series D Convertible Preferred Stock to TRIS; and (iii) will pay TRIS certain royalty fees through license term in accordance with the Tris License Agreement.

The Tris License Agreement was valued at \$9.9 million and will be amortized over the life of the Tris License Agreement up to twenty years. The amortization expense for each of the three months ended December 31, 2018 and 2017 was \$82,000 and \$0, respectively. The amortization expense for each of the six months ended December 31, 2018 and 2017 was \$82,000 and \$0, respectively.

We also agreed to make certain quarterly royalty payments to TRIS which will be calculated as a percentage of our Tuzistra XR net sales, payable within 45 days of the end of the applicable quarter.

As of November 2, 2018, the contingent consideration, related to this asset, was valued at \$8.8 million using a Monte Carlo simulation. The contingent consideration accretion expense for the three months ended December 31, 2018 and 2017 was \$46,000, and \$0, respectively. The contingent consideration accretion expense for the six months ended December 31, 2018 and 2017 was \$46,000, 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 \$70.1 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 and the \$5.0 million debt we issued in November 2018. 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 the next 12 months.

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 December 31, 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. Lessees are required to use a modified retrospective transition approach 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. In July 2018, the FASB issued ASU 2018-10, "*Codification Improvements to Topic 842, Leases*," to clarify how to apply certain aspects of the new lease standard. In July 2018, the FASB also issued ASU 2018-11, "*Leases (Topic 842): Targeted Improvements*," to give entities another option for transition. The additional option for transition allows an entity to apply the new lease standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. The new standards are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the impact of its pending adoption of this standard on its financial statements. As of December 31, 2018, the Company has future operating lease payments of approximately \$197,000 that are being evaluated. The Company is working on gathering all key lease data elements to meet the requirements of the new guidance.

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 December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
U.S	\$ 1,730,000	\$ 965,000	\$ 3,001,000	\$ 1,897,000
Rest-of-the-World	65,000	86,000	226,000	231,000
Total net revenue	<u>\$ 1,795,000</u>	<u>\$ 1,051,000</u>	<u>\$ 3,227,000</u>	<u>\$ 2,128,000</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. We currently have a reserve of \$11,000 for slow moving inventory as of December 31, 2018 and \$0 at June 30, 2018.

Inventory balances consist of the following:

	December 31, 2018	June 30, 2018
Finished goods	\$ 1,158,000	\$ 239,000
Raw materials	498,000	1,100,000
Reserve	(11,000)	-
Total inventory	<u>\$ 1,645,000</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 December 31, 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	315,000	344,000
Lab equipment	3 - 5	90,000	90,000
Less accumulated depreciation and amortization		(366,000)	(540,000)
Fixed assets, net		<u>\$ 187,000</u>	<u>\$ 219,000</u>

The depreciation and amortization expense was as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Depreciation and amortization expense	\$ 16,000	\$ 81,000	\$ 44,000	\$ 161,000

Note 5 – Patents

The cost of the oxidation reduction potential (“ORP”) related patents for the RedoxSYS and MiOXSYS Systems was \$380,000 when they were acquired and are being amortized over the remaining U.S. patent life of approximately 15 years as of the date, which expires in March 2028. Patents consist of the following:

	As of December 31, 2018	As of June 30, 2018
Patents	\$ 380,000	\$ 380,000
Less accumulated amortization	(147,000)	(134,000)
Patents, net	<u>\$ 233,000</u>	<u>\$ 246,000</u>

The amortization expense was as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Amortization expense	\$ 7,000	\$ 6,000	\$ 13,000	\$ 12,000

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, accrued liabilities, and debt 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 December 31, 2018 and June 30, 2018, by level within the fair value hierarchy.

	Fair Value Measurements Using			
	Level 1	Level 2	Level 3	Total
December 31, 2018				
LIABILITIES				
Warrant derivative liability	\$ -	\$ -	\$ 26,000	\$ 26,000
Contingent consideration	\$ -	\$ -	\$ 13,377,000	\$ 13,377,000
June 30, 2018				
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 December 31, 2018:

	December 31, 2018	At Issuance
Warrants:		
Volatility	166.2%	188.0%
Equivalent term (years)	3.63	5.00
Exercise premium	5%	20%
Risk-free interest rate	2.48%	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	(68,000)
Balance as of December 31, 2018	<u>\$ 26,000</u>

We classify our contingent consideration liability in connection with the acquisition of Natesto, ZolpiMist and Tuzistra XR 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 December 31, 2018:

	Contingent Consideration
Balance as of June 30, 2018	\$ 4,694,000
Increase due to purchase of assets	8,833,000
Increase due to accretion	200,000
Decrease due to contractual payment	(350,000)
Balance as of December 31, 2018	<u>\$ 13,377,000</u>

Note 7 – Commitments and Contingencies

Commitments and contingencies are described below and summarized by the following as of December 31, 2018:

	Total	Remaining					
		2019	2020	2021	2022	2023	Thereafter
Prescription database	\$ 2,185,000	\$ 630,000	\$ 509,000	\$ 534,000	\$ 512,000	\$ -	\$ -
Milestone payments	5,500,000	-	-	-	3,000,000	2,500,000	-
Office lease	197,000	61,000	109,000	27,000	-	-	-
	<u>\$ 7,882,000</u>	<u>\$ 691,000</u>	<u>\$ 618,000</u>	<u>\$ 561,000</u>	<u>\$ 3,512,000</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. In December 2018, Aytu executed an amendment to the contract that added Tuzistra XR and extended the contract through May of 2022. The amendment added \$1.7 million to the contract and as of December 31, 2018, Aytu has \$2.2 million in payments remaining.

Milestone Payments

In connection with our intangible assets, Aytu has certain milestone payments that will be payable in the future based around sales performance totaling \$5.5 million.

Office Lease

In June 2018, the Company entered into a 12-month operating lease, beginning on August 1, 2018, for a new office space in Raleigh, North Carolina. 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. Rent expense for the respective periods was as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Rent expense	\$ 31,000	\$ 35,000	\$ 63,000	\$ 70,000

Note 8 -Debt

On November 29, 2018, Aytu issued a collateralized \$5.0 million promissory note (the "Armistice Note") to Armistice Capital ("Armistice"). The Armistice Note is collateralized by the future revenue stream from the products licensed to the Company under the Tris License Agreement between the Company and TRIS. The Armistice Note carries an annual interest rate of 8% and has a three-year term with principal and interest payable at that time. The Company has the right, in its sole discretion, to repay the Armistice Note without penalty at any time after December 29, 2018. For the quarter ended December 31, 2018, the Company has not exercised the early repayment option.

The interest expense for the three months ended December 31, 2018 and 2017 was \$36,000 and \$0, respectively. The interest expense for the six months ended December 31, 2018 and 2017 was \$36,000 and \$0, respectively.

Note 9 – Common Stock

At December 31, 2018 and June 30, 2018, Aytu had 10,504,769 and 1,794,762 common shares outstanding, respectively, and 4,532,664 and 0 preferred shares outstanding, respectively. 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, 8,342,993 are designated as Series C Convertible Preferred Stock, and 400,000 are designated as Series D Convertible Preferred Stock. Included in the common stock outstanding are 2,744,912 shares of restricted stock issued to executives, directors, employees and consultants.

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. The Common Stock issued had a relative fair value of \$533,000 and a fair value of \$594,000. The Series C Preferred Stock issued had a relative fair value of \$9.7 million and a fair value of \$10.8 million. The Warrants are exercisable upon issuance and will expire five years from the date of issuance. The Warrants have a relative fair value of \$1.6 million, a fair value of \$1.8 million, and gross proceeds of \$88,000. 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 also exercised their over-allotment option in full and purchased an additional 1,320,000 shares of Common Stock and 1,320,000 Warrants. The Common Stock issued had a relative fair value of \$1.5 million and a fair value of \$1.7 million. The Warrants have the same terms as the Warrants sold in the registered offering. These Warrants have a relative fair value of \$238,000, a fair value of \$265,000, and gross proceeds of \$13,000, which was the purchase price per the underwriting agreement.

As of December 31, 2018, investors holding Aytu Series C Preferred shares exercised their right to convert 4,210,329 Aytu Series C Preferred shares into 4,210,329 shares of Aytu common stock.

In October 2018, Aytu issued 9,000 shares of common stock to a former employee.

On November 2, 2018, the Company issued 400,000 shares of Series D Convertible Preferred Stock as consideration for an asset purchase in a private placement.

Note 10 – 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 December 31, 2018, we have 179,841 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 December 31, 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 December 31, 2018	1,787	\$ 325.96	6.49
Exercisable at December 31, 2018	1,615	\$ 325.74	6.39

As of December 31, 2018, there was \$54,000 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 0.65 years.

During the quarter ended December 31, 2018, Aytu issued 75,000 performance-based stock options out of the 2015 Plan to a consultant. These options vest based on meeting certain market criteria with exercise price of \$1.00. Options that require specific events before they begin to vest are valued at grant date. During the quarter, we did not recognize any expense for these options as the specific events are not probable of occurring.

Restricted stock issued out of the 2015 Stock Plan 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	2,707,022	\$ 1.30	
Cancelled	-	\$ -	
Unvested at December 31, 2018	<u>2,743,372</u>	\$ 1.81	9.6

In October 2018, Aytu issued 2,707,022 shares of restricted stock to executives, directors, employees pursuant to the 2015 Plan, which vest in October 2028. Expense will be recognized over the 10-year vesting period.

Under the 2015 Plan, there was \$4,729,000 of total unrecognized share-based compensation expense related to the non-vested restricted stock as of December 31, 2018. The Company expects to recognize this expense over a weighted-average period of 9.56 years. During the three months ended December 31, 2018, the expense related to these awards was \$103,000. During the six months ended December 31, 2018, the expense related to these awards was \$139,000.

Aytu previously issued 1,540 shares of restricted stock outside the Aytu 2015 Plan, which vest in July 2026. The unrecognized expense related to these shares was \$1,496,000 as of December 31, 2018 and will be recognized over the 10-year vesting period, of which 7.52 years remain. During the three months ended December 31, 2018, the expense related to these awards was \$50,000. During the six months ended December 31, 2018, the expense related to these awards was \$100,000.

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 December 31,		Six Months Ended December 31,	
Selling, general and administrative:	2018	2017	2018	2017
Stock options	\$ 41,000	\$ 81,000	\$ 107,000	\$ 276,000
Restricted stock	153,000	32,000	239,000	104,000
Total share-based compensation expense	<u>\$ 194,000</u>	<u>\$ 113,000</u>	<u>\$ 346,000</u>	<u>\$ 380,000</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
Warrants issued in connection with the October 2018 offering	10,120,000	\$ 1.50	
Warrants issued to underwriters in connection with the October 2018 offering	303,600	\$ 1.50	
Outstanding December 31, 2018	<u>12,306,261</u>	\$ 5.24	4.67

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).

In connection with our October 2018 public offering, we issued warrants to the investors and underwriters to purchase an aggregate of 10,423,600 shares of the Company's common stock at an exercise price of \$1.50 and a term of five years. These warrants are accounted for under equity treatment. These warrants issued had a relative fair value of \$1.8 million and a fair value of \$2.0 million.

Note 11 – 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, Aytu will prefund certain amounts from which 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. One of the Aytu directors, Mr. Donofrio, is an executive officer of TCI and has no direct interest in the arrangement.

Note 12 – Subsequent Events

On November 29, 2018, the Company issued a promissory note to Armistice Capital Master Fund Ltd. ("Armistice") in the principal amount of \$5,000,000 (the "Note"). In order to reduce its long-term debt, the Company and Armistice have entered into an Exchange Agreement dated February 5, 2019, pursuant to which Armistice has agreed, subject to shareholder approval, to exchange the Note for: (i) 3,120,064 shares of Common Stock of the Company, resulting in Armistice owning no more than 33.3% of the outstanding Common Stock of the Company; (ii) 2,751,148 shares of Series E Convertible Preferred Stock of the Company; and (iii) a Common Stock Purchase Warrant exercisable for 4,403,409 shares of Common Stock of the Company (the "Exchange Securities"). Upon issuance of the Exchange Securities, Armistice will cancel the Note and all principal and interest owed thereunder. The Exchange Agreement will also include the forms of: (i) a Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock; and (ii) the Common Stock Purchase Warrant to be issued to Armistice.

On February 5, we received a conversion notice for 1,900,000 shares of our preferred series C into common stock.

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 a specialty pharmaceutical company focused on commercializing novel products that address significant patient needs like hypogonadism (low testosterone), severe cough and respiratory symptoms, 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. 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.

On November 30, 2018 the Board of Directors of Aytu expanded the size of the Board of Directors by two seats and elected Ketan B. Mehta as a director. We anticipate that the Board of Directors will elect Steven J. Boyd to fill the remaining vacancy in the third quarter of fiscal 2019.

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, we have raised approximately \$70.1 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 and through February 2020.

We have incurred accumulated net losses since inception, and at December 31, 2018, we had an accumulated deficit of \$87.4 million. Our net loss was \$4.7 million for the three months ended December 31, 2018 and we used \$7.0 million in cash from operating activities during the six months ended December 31, 2018. As of December 31, 2018, we had cash, cash equivalents and restricted cash totaling \$17.9 million and other current assets with an aggregate balance of \$4.1 million available to fund our operations, offset by an aggregate of \$3.3 million in accounts payable and others and accrued liabilities. In October 2018, we raised gross proceeds of \$15.2 million in a public offering, and in November 2018, we raised \$5.0 million of debt which requires no cash payment until maturity in November 2022.

We are a relatively young company with substantial revenue growth expectations as demonstrated by the nearly 25% quarter-over-quarter net revenue growth for the three months ended December 31, 2018, and 108% growth in net revenue for the first six months of fiscal 2019 over prior six months period ended June 30, 2018. Our primary activities are focused on commercializing our approved product portfolio, including Natesto, Tuzistra XR, and ZolpiMist, building our commercial infrastructure, improving patient access, and improving the effectiveness and reach of our sales force.

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 continue to increase net revenue and therefore reduce the rate of cash use. We expect operating expenses to increase slightly as we expect to have several start-up costs related to the launch of Tuzistra XR as well as the expected cost of expanding our sales team beginning in the quarter ended December 31, 2018. With these assumptions and the additional capital we raised in October and November, we believe that we have sufficient cash resources to fund operations through February 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 December 31, 2018) is combined in Note 1 to the consolidated financial statements.

RESULTS OF OPERATIONS

Results of Operations – Three and six months ended December 31, 2018 compared to December 31, 2017

Results of operations for the three months ended December 31, 2018 and the three months ended December 31, 2017 reflected losses of approximately \$4.7 million and \$3.7 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 \$859,000 for the three months ended December 31, 2018 and \$256,000 for the three months ended December 31, 2017, respectively. The non-cash charges increased in the three months ended December 31, 2018 primarily due to an increase in depreciation, amortization and accretion, and the issuance of restricted stock.

Results of operations for the six months ended December 31, 2018 and the six months ended December 31, 2017 reflected losses of approximately \$8.1 million and \$7.9 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 \$1.5 million for the six months ended December 31, 2018 and \$877,000 million for the six months ended December 31, 2017, respectively. The non-cash charges increased in the six months ended December 31, 2018 primarily due to the reduction in warrant derivative income.

Revenue

Product revenue

We recognized net revenue from product sales of \$1.8 million and \$1.1 million for the three months ended December 31, 2018 and 2017, respectively. We recognized net revenue from product sales of \$3.2 million and \$2.1 million for the six months ended December 31, 2018 and 2017, respectively. Our product portfolio includes Natesto, Tuzistra XR, ZolpiMist, and the MiOXSYS and RedoxSYS Systems, but the majority of our revenue currently comes from Natesto sales.

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 government 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 December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Gross product revenue	\$ 3,368,000	\$ 2,028,000	\$ 5,688,000	\$ 4,272,000
Provisions to reduce gross product sales to net product sales	(1,573,000)	(977,000)	(2,461,000)	(2,144,000)
Net product revenue	<u>\$ 1,795,000</u>	<u>\$ 1,051,000</u>	<u>\$ 3,227,000</u>	<u>\$ 2,128,000</u>
Percentage of gross sales to net sales	53.3%	51.8%	56.7%	49.8%

Expenses

Cost of Sales

The cost of sales of \$525,000 and \$385,000 recognized for the three months ended December 31, 2018 and 2017, respectively, and \$936,000 and \$673,000 recognized for the six months ended December 31, 2018 and 2017, respectively, are related to Natesto, Tuzistra XR, ZolpiMist, 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 December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Clinical trials and sponsored research	\$ 116,000	\$ (278,000)	\$ 236,000	\$ (139,000)
Consultants and other	33,000	1,000	69,000	2,000
	<u>\$ 149,000</u>	<u>\$ (277,000)</u>	<u>\$ 305,000</u>	<u>\$ (137,000)</u>

Comparison of Three and Six Months Ended December 31, 2018 and 2017

Research and development expenses increased \$426,000, or 153.8%, for the three months ended December 31, 2018 compared to the three months ended December 31, 2017. Research and development expenses increased \$442,000, or 322.6%, for the six months ended December 31, 2018 compared to the six months ended December 31, 2017. The increase was due primarily to the absence of a reversal of a previously accrued liability, which we had present in December of 2017. 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 administrative 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; directors fees; and sales & marketing – related party, which includes payments to TCI for the Company sponsored co-pay program. These costs are summarized as follows:

	Three Months Ended December 31,		Six Months Ended December 31,	
	2018	2017	2018	2017
Labor	\$ 2,376,000	\$ 2,371,000	\$ 4,657,000	\$ 4,772,000
Stock-based compensation	194,000	112,000	346,000	379,000
Patent costs	55,000	107,000	108,000	235,000
Professional fees	274,000	312,000	416,000	731,000
Occupancy, travel and other	2,106,000	1,611,000	3,014,000	2,975,000
Directors fees	42,000	40,000	82,000	80,000
Sales & marketing - related party	91,000	-	345,000	-
	<u>\$ 5,138,000</u>	<u>\$ 4,553,000</u>	<u>\$ 8,968,000</u>	<u>\$ 9,172,000</u>

Comparison of Three and Six Months Ended December 31, 2018 and 2017

Selling, general and administrative costs increased \$585,000, or 12.8%, for the three months ended December 31, 2018, compared to the three months ended December 31, 2017. The primary increase was due to occupancy, travel and other, which included expenses related to our annual National Sales Meeting, sales & marketing – related party, which included payments to TCI for the Company sponsored co-pay program, and stock-based compensation. Selling, general and administrative costs decreased \$204,000, or 2.2%, for the six months ended December 31, 2018, compared to the six months ended December 31, 2017. The primary decrease was due to professional fees and patent costs decreasing. Professional fees decreased because we used outside accounting firms less, and patent fees decreased as we abandoned ProstaScint and Fiera related patents. We expect selling, general and administrative expenses to increase slightly in the remainder of fiscal 2019 due to expanding our sales team and launching Tuzistra XR.

Amortization of Intangible Assets

Amortization of intangible assets was \$534,000 for the three months ended December 31, 2018, and \$384,000 for the three months ended December 31, 2017. Amortization of intangible assets was \$986,000 for the six months ended December 31, 2018, and \$770,000 for the six months ended December 31, 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 six months ended December 31, 2018, our operating activities used \$7.0 million in cash, which was less than the reported net loss of \$8.1 million. Our cash use was lower than our reported net loss due to an increase in accounts payable and other, accrued liabilities, and accrued compensation expense, along with the recognition of non-cash expenses such as depreciation, amortization and accretion, and stock-based compensation. These were offset by derivative income, an increase in accounts receivable, inventory and prepaid expenses and other.

During the six months ended December 31, 2017, our operating activities used \$7.3 million in cash, which was less than the reported net loss of \$7.9 million. Our cash use was lower than our reported net loss due to an increase in accounts payable and accrued compensation expense, along with the recognition of non-cash expenses such as depreciation, amortization and accretion, and stock-based compensation. These were offset by derivative income, an increase in accounts receivable and prepaid expenses, and a decrease in accrued liabilities.

Net Cash Used in Investing Activities

During the six months ended December 31, 2018, we used \$860,000 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 six months ended December 31, 2017, we used \$12,000 in investing activities to purchase fixed assets.

Net Cash from Financing Activities

Net cash provided by financing activities in the six months ended December 31, 2018 was \$18.7 million. This was primarily related to the October 9, 2018 public offering of \$15.2 million, offset by the offering cost of \$1.5 million which was paid in cash. We also closed on a debt agreement for \$5.0 million.

Net cash provided by financing activities in the six months ended December 31, 2017 of \$10.4 million was primarily related to the private offering of \$11.8 million, offset by the offering cost of \$1.4 million which was paid in cash.

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 in the period covered by this report. For a description of the agreement by the Company to issue unregistered securities subsequent to the period of this report, see the disclosure contained in "Item 5. Other Information" below.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not Applicable.

Item 5. Other Information.

Waiver of Preferred Stock Blocker

On February 5, 2019, the Company and Armistice entered into a Waiver of Blocker prior to the execution of the Exchange Agreement, pursuant to which the Company and Armistice waived the beneficial ownership limitation contained in the Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock, solely with respect to Armistice. A copy of the Waiver of Blocker is attached here to as Exhibit 10.6 and is incorporated herein by reference.

Exchange Agreement

On February 5, 2019, the Company and Armistice entered into the Exchange Agreement, pursuant to which Armistice agreed, subject to receipt of stockholder approval, to exchange the Note with the Company for: (1) 3,120,064 shares of Common Stock of the Company, (2) 2,751,148 shares of Series E Convertible Preferred Stock of the Company, and (3) a Common Stock Purchase Warrant (the "Exchange Warrant") exercisable for 4,403,409 shares of Common Stock of the Company. The Company agreed to issue the Exchange Securities in exchange for the cancellation of the Note and the satisfaction of all principal and interest owed thereunder. The exchange of the Note for the Exchange Securities, and the other terms of the transactions contemplated thereby, is subject to the terms and conditions of the Exchange Agreement. The Exchange Agreement included the forms of Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock and the Exchange Warrant. In connection with the foregoing, the Company will rely upon the exemption from securities registration provided by Regulation D under the Securities Act of 1933, as amended.

After giving effect to the Exchange Transactions, Armistice will own 5,468,281 shares of Common Stock, 2,751,148 shares of Series E Convertible Preferred Stock and warrants to purchase 7,392,298 shares of Common Stock.

The Transactions are subject to customary closing conditions, including receipt of stockholder approval. The Exchange Agreement contains standard representations, warranties and covenants of the Company and Armistice. The representations, warranties and covenants contained in the Exchange Agreement were made only for purposes of the Exchange Agreement and as of specific dates; were solely for the benefit of the parties to the Exchange Agreement; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Exchange Agreement, which subsequent information may or may not be fully reflected in public disclosures or statements by the Company. Accordingly, investors should read the representations and warranties in the Exchange Agreement not in isolation but only in conjunction with the other information about the Company that the Company included in reports, statements and other filings made with the SEC.

The foregoing summary of the Exchange Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Exchange Agreement, a copy of which is attached as Exhibit 10.3 and is incorporated herein by reference.

The terms of the Series E Convertible Preferred Stock and the Exchange Warrant issuable upon stockholder approval are described further below.

Series E Convertible Preferred Stock

General. In connection with the Exchange Agreement, the Company's board of directors will designate shares of the Company's preferred stock as Series E Convertible Preferred Stock (the "Series E Preferred Stock"). The preferences and rights of the Series E Preferred Stock will be as set forth in the Certificate of Designation.

Conversion. Each share of Series E Preferred Stock will be initially convertible at any time at the holder's option into one share of common stock, which conversion ratio will be subject to adjustment for stock splits, stock dividends, distributions, subdivisions and combinations. Notwithstanding the foregoing, the Certificate of Designation further provides that the Company shall not effect any conversion of the Series E Preferred Stock, with certain exceptions, to the extent that, after giving effect to an attempted conversion, the holder (together with its affiliates, and any persons acting as a group together with the holder or any of its affiliates) would beneficially own a number of shares of common stock in excess of 40% of the shares of the Company's 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 Company's 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 its 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 E Preferred Stock will be entitled to receive upon conversion of such Series E Preferred Stock the same kind and amount of securities, cash or property which the holders would have received had they converted their Series E Preferred Stock immediately prior to such fundamental transaction. Any successor to the Company or surviving entity shall assume the obligations under the Series E Preferred Stock.

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

Voting Rights. With certain exceptions, as described in the Certificate of Designation, the Series E Preferred Stock will have no voting rights. However, as long as any shares of Series E 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 E Preferred Stock: (a) alter or change adversely the powers, preferences or rights given to the Series E Preferred Stock or alter or amend the 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, (c) increase the number of authorized shares of Series E Preferred Stock or (d) enter into any agreement with respect to any of the foregoing.

Dividends. The Certificate of Designation will provide, 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 it pays dividends on each share of Series E Preferred Stock on an as-converted basis. Other than as set forth in the previous sentence, the Certificate of Designation will provide that no other dividends shall be paid on shares of Series E 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 will not provide for any restriction on the repurchase of Series E Preferred Stock by the Company while there is any arrearage in the payment of dividends on the Series E Preferred Stock. There will be no sinking fund provisions applicable to the Series E Preferred Stock.

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

Exchange Listing. The Company does not intend to apply for listing of the Series E Preferred Stock on any securities exchange or other trading system.

The foregoing summary of the Preferred Shares does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Certificate of Designation, a copy of which is filed as Exhibit 10.4 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

Exchange Warrant

General. Upon receipt of stockholder approval, the Company will issue to Armistice the Exchange Warrant. A description of the material terms of the Exchange Warrant is included below. The Exchange Warrant entitles Armistice to purchase 4,403,409 shares of the Company's common stock at an exercise price of \$1.00 per share, subject to adjustment as discussed below. The Exchange Warrant will expire on the five-year anniversary of issuance, or earlier upon redemption or liquidation.

Exercise. The Exchange Warrant may be exercised by providing an executed notice of exercise form followed by full payment of the exercise price or on a cashless basis, if applicable. Armistice does not have the rights or privileges of holders of common stock or any voting rights with respect to the shares of common stock represented by the Exchange Warrant until it exercises the Exchange Warrant and receives its shares of common stock. After the issuance of shares of common stock upon exercise of the Exchange Warrant, Armistice will be entitled to one vote for each share held of record on all matters to be voted on by stockholders generally.

Beneficial Ownership Limitation. Armistice will be subject to a requirement that it will not have the right to exercise the Exchange Warrant, to the extent that after giving effect to such exercise, Armistice (together with its affiliates) would beneficially own in excess of 40% of the shares of common stock of the Company outstanding immediately after giving effect to such exercise.

Anti-Dilution Protection. If the number of outstanding shares of common stock is increased by a stock dividend payable in shares of common stock, is increased by a split-up of shares of common stock, is decreased by a combination of outstanding shares of common stock, or is reclassified by the issuance of any shares of capital stock of the Company then, on the effective date of such event, the exercise price of the Exchange Warrant will be multiplied by a fraction of which the numerator is the number of shares of common stock outstanding immediately prior to such event and the denominator is the number of shares of common stock outstanding immediately after such event, and the number of shares of common stock issuable upon exercise of the Exchange Warrant will be proportionately adjusted such that the aggregate exercise price will remain unchanged. Such adjustment will be effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will be effective immediately after the effective date in the case of a subdivision, combination or re-classification.

In addition, if the Company, at any time while the Exchange Warrant is outstanding and unexpired, grants, issues or sells any (i) securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time common stock, including, without limitation, any debt, preferred stock, right, option, warrant 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, or (ii) 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 Armistice will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which it could have acquired if it had held the number of shares of common stock acquirable upon complete exercise of the Exchange Warrant immediately before the date on which a record is taken or the record holders are determined for the grant, issuance or sale of such Purchase Rights.

In addition, if the Company, at any time while the Exchange Warrant is outstanding and unexpired, declare or make any dividend or other distribution of assets to holders of common stock, by way of return of capital or otherwise, at any time after the issuance of the Exchange Warrant, then Armistice shall be entitled to participate in such distribution to the same extent that it would have participated therein had it held the number of shares of common stock acquirable upon complete exercise of the Exchange Warrant immediately before the date of which a record is taken or the record holders are determined for such distribution.

Fundamental Transaction. In the event of a "fundamental transaction" then, upon a subsequent exercise of the Exchange Warrant, Armistice will have the right to purchase and receive the same kind and amount of consideration receivable by the stockholders of the Company in such fundamental transaction. The Company will cause the surviving company in a fundamental transaction to assume the obligations of the Company under the Exchange Warrant. For purposes of the Exchange Warrant, a "fundamental transaction" includes, subject to certain exceptions, (i) any reclassification, reorganization or recapitalization of the common stock of the Company, (ii) any merger or consolidation of the Company with or into another corporation, (iii) any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or more transactions, (iv) any, direct or indirect, purchase offer, tender offer or exchange offer is completed pursuant to which stockholders 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 of the Company, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination with another person whereby such other person acquires more than 50% of the outstanding shares of common stock of the Company.

Amendments. The Exchange Warrant provides that the terms of the Exchange Warrant may be amended only in a writing signed by the Company and Armistice.

The issuance of the Exchange Warrant is not expected to affect the rights of our existing security holders, other than with respect to potential dilution as a result of an increase in the number of shares of common stock outstanding if Armistice exercises the Exchange Warrant.

The foregoing summary of the Exchange Warrant does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Exchange Warrant, a copy of which is filed as Exhibit 10.5 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

Item 6. Exhibits.

Exhibit Number	Description
<u>10.1</u>	Promissory Note Issued to Armistice Capital dated November 29, 2018. (Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed December 4, 2018).
<u>10.2</u>	License, Development, Manufacturing and Supply Agreement dated November 2, 2018 between Aytu BioScience, Inc. and TRIS Pharma, Inc.*.
<u>10.3</u>	Exchange Agreement dated February 5, 2019.
<u>10.4</u>	Form of Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock.
<u>10.5</u>	Form of Warrant.
<u>10.6</u>	Waiver of Blocker dated February 5, 2019.
<u>31.1</u>	Certificate of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<u>31.2</u>	Certificate of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
<u>32.1</u>	Certificate of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**.
101	XBRL (eXtensible Business Reporting Language). The following materials from Aytu BioScience, Inc.'s Quarterly Report on Form 10-Q for the quarter ended December 31, 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.

*Application has been made with the Securities and Exchange Commission to seek confidential treatment of certain provisions. Omitted materials for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

** 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: February 7, 2019

By: /s/ David A. Green

David A. Green
Chief Financial Officer (principal financial and
accounting officer)
Date: February 7, 2019

*** CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR CERTAIN PORTIONS OF THIS EXHIBIT. CONFIDENTIAL PORTIONS OF THIS EXHIBIT ARE DESIGNATED BY [**]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

LICENSE, DEVELOPMENT, MANUFACTURING AND SUPPLY AGREEMENT

THIS LICENSE, DEVELOPMENT, MANUFACTURING AND SUPPLY AGREEMENT (this “**Agreement**”), dated as of November 2, 2018 (the “**Effective Date**”), by and between TRIS Pharma, Inc., a New Jersey corporation, with corporate offices at 2033 Route 130, Suite D, Monmouth Junction, New Jersey 08852 (“**TRIS**”), and AYTU BioScience, Inc., a Delaware corporation, with its principal offices at 373 Inverness Parkway, Suite 206, Englewood, CO (“**AYTU**”). (AYTU and TRIS are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, TRIS conducts pharmaceutical research and development, and develops proprietary drug delivery technologies that have application to a variety of pharmaceutical products and manufactures pharmaceutical products;

WHEREAS, TRIS has developed and received Regulatory Approval for Tuzistra XR, and reacquired the NDA for Tuzistra XR from the Former Owner;

WHEREAS, TRIS has developed and filed an NDA for CCP-08, a branded Product, for which it has received a complete response letter from the FDA dated August 4, 2017 and for which it intends to continue to pursue Regulatory Approval;

WHEREAS, AYTU develops, manufactures and distributes pharmaceutical products; and WHEREAS, AYTU desires to distribute the Products in the Territory.

Accordingly, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Parties, intending to be legally bound, agree to the following terms and conditions:

ARTICLE I - DEFINITIONS

“**AAA**” has the meaning set forth in Section 14.3.

“**Adjusted Number of Units**” means that number of Units of Product based upon each Unit being a 16 ounce bottle, so that, for example, a five ounce bottle of Product equals 0.3125 Unit, provided that one ounce bottles shall not be included in Adjusted Number of Units.

“**Administrative Fee**” means for any period, [**] of Net Sales of AG Product for such period, which amount is to be retained by TRIS.

“**Affiliate**” means any Person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future, directly or indirectly, controls, is controlled by or is under common control with a party. For purposes of the foregoing, “control” shall mean, with respect to: (a) a corporation, the ownership, directly or indirectly, of greater than fifty percent (50%) of the voting power to elect the directors thereof (without regard to the occurrence of any contingency); and to (b) any other entity, managerial control by virtue of a written agreement.

“**AG Product**” means any product, promoted, distributed, marketed, offered for sale and/or sold as a branded or non-branded generic product, or any Private Label product, under or pursuant to an approved Product NDA.

“**AG Product Royalty Payments**” has the meaning set forth in Section 6.9(a).

“**Agency**” means any Governmental Authority responsible for granting approvals for the sale of a Product.

“**Agreement**” means this agreement, together with all Exhibits attached hereto.

“**ANDA**” means an “abbreviated new drug application,” as defined in 21 U.S.C. Section 355(j) of the FD&C Act and applicable FDA rules and regulations.

“**API**” means an active pharmaceutical ingredient of a particular product.

“**Applicable Law**” means, with respect to any Person, any domestic or foreign, federal, state or local statute, treaty, law, ordinance, rule, regulation, administrative interpretation, order, writ, injunction, judicial decision, decree or other requirement of any Governmental Authority applicable to such Person or any of such Person’s respective properties, assets, officers, directors, employees, consultants or agents (in connection with such officers’, directors’, employees’, consultants’ or agents’ activities on behalf of such Person).

“**Applicable Make Whole Payment per Unit**” means for each Make Whole Payment Commercial Year, commencing with the second Make Whole Payment Commercial Year and ending with, and including, the tenth Make Whole Payment Commercial Year, the following respective amounts: [**] for the second Make Whole Payment Commercial Year; [**] for the third Make Whole Payment Commercial Year; and [**] for each Make Whole Payment Commercial Year commencing with the fourth Make Whole Payment Commercial Year through the tenth Make Whole Payment Commercial Year.

“**Applicable Royalty Percentage**” means with respect to a Product and the applicable period described the respective percentage set forth: [**] until no further royalty payments are due from TRIS to the Former Owner, or any assignee thereof with respect to such Product and thereafter [**] ;*provided however* that (i) if no royalty payments are due to the Former Owner as a result of the acquisition and ownership of such rights to such royalty payments of such Former Owner by TRIS, then the Applicable Royalty Percentage shall remain at [**] for the remaining period for which the Former Owner would have been entitled to royalty payments with respect to a Product (e.g., until [**], in the case of Tuzistra XR, and [**]), and thereafter as if no such acquisition had taken place (e.g., [**] or as provided in the last sentence of this definition); and (ii) if (and only while) no royalty payments are due to the Former Owner as a result of the acquisition and ownership of such rights to such royalty payments of such Former Owner by AYTU (and in order to avoid AYTU paying a [**] royalty to TRIS and then TRIS repaying [**] thereof back to AYTU), then the Applicable Royalty Percentage shall equal [**] for the remaining period for which the Former Owner would have been entitled to royalty payments with respect to a Product (e.g., until [**], in the case of Tuzistra XR and [**]), and thereafter as if no such acquisition had taken place (e.g., [**] or as provided in the last sentence of this definition). Notwithstanding the foregoing, after the expiration of the last to expire TRIS Patent containing a claim Covering a Product, whether or not such Patent is listed in the FDA’s Orange Book, the Applicable Royalty Percentage shall be fixed at [**] with respect to such Product.

“**Approved Manufacturer**” has the meaning set forth in Section 5.6.

“**Article**” means any article of this Agreement.

“**Asset Sale Agreement**” means that certain Asset Sale Agreement dated as of June 13, 2018, between TRIS and the Former Owner.

“**AYTU’s Fault**” has the meaning set forth in Section 5.5(b).

“**AYTU Indemnified Party**” has the meaning set forth in Section 13.1(b).

“**AYTU Marks**” has the meaning set forth in Section 4.10(a).

“**AYTU Non-Product Specific Trademark**” has the meaning set forth in Section 4.10(b).

“**AYTU Patent Challenge**” has the meaning set forth in Section 9.2(d).

“**AYTU Product Trademark**” has the meaning set forth in Section 4.10(b).

“**AYTU Regulatory Documentation**” means, with respect to a Product, the Regulatory Documentation prepared for such Product by or on behalf of AYTU.

“**AYTU**” has the meaning set forth in the preamble.

“**Bankruptcy Code**” means 11 USC §§ 101, *et seq.*

“**Branded Prescription Drug Fee**” means the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs by section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111-152 (124 Stat. 1029 (2010)), as the same may be further amended.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, USA are authorized or required by law to close.

“**CCP-08**” is defined in the definition of Products.

“**cGMP**” means the current Good Manufacturing Practices regulations of the FDA set forth in 21 C.F.R. pts. 210 and 211, as amended from time to time.

“**CMC**” means the chemistry, manufacturing and controls of a Product, as specified by the FDA.

“**Commercially Reasonable Efforts**” means exercising such reasonable efforts and diligence in accordance with a Party’s reasonable business, legal, medical and scientific judgment and in a manner consistent with and in accordance with the efforts and resources such Party would use for a pharmaceutical product owned, licensed in, or controlled by such Party which is of similar market potential at a similar stage of its product life, taking into account the competitiveness of the marketplace (including the number of competing products), the proprietary position of such product, issues of safety and efficacy, the regulatory environment, and the profitability of such product.

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

“**Common Stock**” means AYTU’s Common Stock, par value \$0.0001 per share.

“**Competing Product**” has the meaning set forth in Section 3.3.

“**Confidential Information**” has the meaning set forth in Section 10.1(a).

“**Control**” means, with respect to an item of information or Intellectual Property Right, the possession of the ability by ownership, license or otherwise (other than by operation of the license and other rights pursuant to this Agreement) to assign or grant a license or sublicense as provided for herein under such item or right without violating the terms of any agreement or other arrangement, express or implied, with any Third Party.

“**Cover**” means, with respect to a claim of a Patent and a Product, that such claim would be infringed, absent a license, by the manufacture, use, offer for sale, sale or importation of such Product (considering claims of patent applications as issued with the then-pending claims even though pending).

“**Development**” means pre-clinical and clinical drug development activities which occur prior to or as a condition of Regulatory Approval including, among other things: test method development and stability testing, formulation, process development, manufacturing scale-up, development-stage manufacturing, analytical method validation, manufacturing process validation, cleaning validation, scale-up and post approval changes and requirements, pre-clinical and clinical studies, regulatory filing submissions and pre-approvals, and regulatory affairs related to the foregoing. When used as a verb, “Develop” means to engage in Development.

“**Disclosing Party**” has the meaning set forth in Section 10.1(a).

“**Dispute**” has the meaning set forth in Section 14.3.

“**Drug Master File**” or “**DMF**” means a drug master file, as further described in 21 C.F.R. 314.420, that is intended for submission or submitted to the FDA in support of an IND and/or NDA and containing detailed information regarding the CMC of a drug product.

“**Effective Date**” has the meaning set forth in the preamble.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Executive Resolution Period**” has the meaning set forth in Section 14.3.

“**Expense Allocation**” means fifty percent (50%) with respect to each of TRIS and AYTU.

“**Facility**” means the manufacturing facility(ies) of TRIS at which the Product is manufactured.

“**FD&C Act**” means the Federal Food, Drug, and Cosmetic Act, as amended, and the rules and regulations of the FDA promulgated thereunder.

“**FDA**” means the United States Food and Drug Administration, or any successor thereto.

“**FDA Fiscal Year**” means a twelve (12) month period, commencing on October 1 and ending on September 30. For purposes of this Agreement: the 2019 FDA Fiscal Year shall be deemed to have commenced on October 1, 2018.

“**FDA Letter**” means the FDA warning letter dated March 26, 2018.

“**Firm PO**” has the meaning set forth in Section 5.2(a).

“**First Commercial Sale**” means, for each Product, the first sale by AYTU, its Subsidiaries or its sublicensees after the Effective Date for end use or consumption of such Product in an arm’s length sale in the United States, and in the case of CCP-08, after the FDA has approved the NDA for such Product.

“**Fiscal Quarter**” means each period of three (3) months ending on March 31, June 30, September 30 or December 31.

“**Force Majeure Event**” has the meaning set forth in Section 14.1.

“**Forecast**” has the meaning set forth in Section 5.1.

“**Forecast Delivery Date**” has the meaning set forth in Section 5.1.

“**Former Owner**” means Vernalis (R&D) Limited, or any permitted assignee or successor of the Former Owner’s rights under the Asset Sale Agreement.

“**Freight Charges**” has the meaning set forth in Section 5.3.

“**GAAP**” means generally accepted accounting principles in effect in the United States from time to time applied on a consistent basis.

“**Generic Equivalent**” means with respect to a product, a generic pharmaceutical product that is therapeutically equivalent to such product, where “therapeutically equivalent” means: an AA or AB rating is assigned to such product’s entry in the list of drug products with effective approvals published in the then-current edition of FDA’s publication “Approved Drug Products with Therapeutic Equivalence Evaluations” and any current supplement to the publication (also known as the “**Orange Book**”) referred to in 21 C.F.R. 314.3 and such product is covered by an ANDA.

“**Governmental Authority**” means any foreign, domestic, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization (including any securities exchange), commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

“**Gross Margin**”: means (x) Net Sales of the AG Products by TRIS or its Subsidiaries (calculated in the same manner as set forth in the definition of “Net Sales,” which shall apply mutatis mutandis as if such sales were sales by AYTU, its Subsidiaries and sub-licensee), minus (y) the sum of (j) the Administrative Fee; (k) the Transfer Price; and (l) royalties payable to the Former Owner.

“**Hatch-Waxman Act**” means the Drug Price Competition and Patent Restoration Act of 1984, as amended.

“**Hatch-Waxman Certification**” has the meaning set forth in Section 7.2(a).

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**IND**” means an Investigational New Drug Application, as described in 21 CFR part 312, or other equivalent name that is defined by the Regulatory Authority, which must be approved by Regulatory Authority or otherwise go into effect prior to conducting clinical trials with respect to a Product in the Territory.

“**Ineligible Month**” has the meaning set forth in Section 6.4(a).

“**Initial Forecast**” has the meaning set forth in Section 5.1.

“**Initial Launch Quantities**” means the Launch quantities of Product ordered by AYTU for Tuzistra XR on the Effective Date or within one Business Day thereafter, consisting of [**] bottles, and one batch of one ounce bottles of Tuzistra XR, and the labels for which may be stickered over to reflect, among other things, AYTU’s NDC code.

“**Intellectual Property Rights**” means, with respect to a Person, any and all existing and future proprietary rights (whether owned by or licensed to such Person), including property rights, know-how rights (including without limitation, manufacturing, mixing and production procedures, all *in vivo* or clinical, pharmacology, toxicology, safety and efficacy data, formulary submissions, pharmaco-economic data, and other such information useful or required in preparing applications for or obtaining or maintaining Regulatory Approval and/or for the manufacturing, packaging, marketing and/or testing of a product), trade secret rights, manufacturing, mixing and production copyrights, design rights, any existing or future patents and patent applications in the Territory and all continuations, continuations-in-part, divisions, reissues, reexaminations, extensions or other government actions which extend the subject matter of the foregoing, and any corresponding patents, patents of addition, granted or registered and all other intellectual property rights in the Territory (including without limitation the right, if any, to sue or bring other actions for past, present and future infringement of such Intellectual Property Rights) as well as any rights that accrue under supplementary protection certificates or the like.

“**Inventory Reports**” has the meaning set forth in Section 5.1.

“**Knowledge**” means for purposes of Article XI: when used with respect to TRIS, the actual knowledge of the representatives of TRIS listed in Schedule I, as of the Effective Date; and when used with respect to AYTU, means the actual knowledge of the representatives of AYTU listed in Schedule II, as of the Effective Date.

“**Label**”, “**Labeled**” or “**Labeling**” means, when used as a noun, all labels and other written, printed or graphic matter upon (i) the Product or any container or wrapper utilized with such Product, or (ii) any written material accompanying such Product, including, without limitation, package inserts, in each case that is subject to FDA review. When used as verb, Label means to affix or insert a Label.

“**Launch**” means the first commercial shipment of a Product by AYTU or its Subsidiaries to Third Party customers in the Territory, and in the case of CCP-08, after receipt by TRIS of Regulatory Approval for such Product from the relevant Agency in the Territory.

“**Launch Date**” means the date of the Launch of a Product.

“**Loss**” or “**Losses**” has the meaning set forth in Section 13.1(a).

“**Make Whole Payment Commercial Year**” means (x) the period from the first day of the calendar month in which the Launch of the first Product to be launched occurs and ending the earlier of (i) twelve months thereafter or (ii) the termination or expiration of the Term of this Agreement with respect to both Products and (y) each period while the Term of either Product is in effect beginning on an anniversary of a Make Whole Payment Commercial Year and ending the earlier of (i) twelve months thereafter or (ii) the termination or expiration of the Term of this Agreement with respect to both Products.

“**Market**” means to promote, advertise, distribute, market, offer to sell and/or sell for purposes of a commercial sale, and “**Marketing**” and “**Marketed**” have a corresponding meaning.

“**Marketing Plan**” has the meaning set forth in Section 4.2.

“**Medium Bottle Size**” has the meaning set forth in Section 3.4.

“**Minimum Unit Sales Commitment**” means with respect to each Make Whole Payment Commercial Year, commencing with the second Make Whole Payment Commercial Year and ending with, and including, the tenth Make Whole Payment Commercial Year, the following respective number of Units of [**] bottles of Product: [**] for the second Make Whole Payment Commercial Year; [**] for the third Make Whole Payment Commercial Year; and [**] for each of the fourth through the tenth Make Whole Payment Commercial Years.

“**Minimum Unit Sales Commitment Shortfall**” means with respect to each Make Whole Payment Commercial Year, commencing with the second Make Whole Payment Commercial Year and ending with, and including, the tenth Make Whole Payment Commercial Year, the difference of (i) the Minimum Unit Sales Commitment for such Make Whole Payment Commercial Year, minus (ii) the Adjusted Number of Units sold during such Make Whole Payment Commercial Year which were included in the Net Sales reported for such Make Whole Payment Commercial Year and included in the calculation of Royalty Payments.

“**NDA**” means a New Drug Application filed with the FDA pursuant to and under 21 U.S.C. Section 355(b) of the FD&C Act.

“**NDA Approval**” means with respect to a Product the FDA has granted approval to Market such Product that is the subject of an NDA in the United States.

“**NDA Approval Milestone**” is defined in Section 2.1(b).

“Net Sales” means with respect to each Product, the gross amount invoiced for sales of such Product in arm’s length sales by AYTU, its Subsidiaries and licensees, if any, to Third Parties, commencing with the First Commercial Sale of such Product, less the following deductions from such gross amounts which are actually incurred, allowed, accrued or specifically allocated: (i) credits, price adjustments or allowances for damaged products (to the extent not covered by insurance), returns, rejections or recalls of Product, and related destruction and processor fees; (ii) normal and customary trade, cash and quantity discounts, off-invoice discounts, allowance for doubtful accounts or other allowances and credits (other than price discounts granted at the time of invoicing which have been already included in the gross amount invoiced); (iii) chargeback payments and rebates (or the equivalent thereof) granted to group purchasing organizations, managed health care organizations, administrators of the Medicare Coverage Gap Discount program or to federal, state/provincial, local and other governments, including their agencies, or to trade customers; (iv) any invoiced freight, postage, shipping, insurance and other transportation charges; (v) sales, value-added (to the extent not refundable in accordance with Applicable Law), and excise taxes, tariffs and duties, and other taxes directly related to the sale (but not including taxes assessed against the income derived from such sale). Net Sales shall not include samples where no value is paid. Net Sales, as set forth in this definition, shall be calculated, in accordance with GAAP. For purposes of determining Net Sales, (a) any Product shall be deemed to be sold when invoiced; and (b) sales between or among AYTU, its licensees and their respective Affiliates shall be excluded from the computation of Net Sales, but shall be included in Net Sales upon first sale to a Third Party. For the avoidance of doubt, the Branded Prescription Drug Fee shall not be deducted in computing Net Sales. It is the expectation of the Parties that deductions from gross sales in determining net sales will be made to reflect the categories of deductions historically made that are listed on Schedule 11.2(l).

“Orange Book” is defined in the definition of Generic Equivalent.

“Package” or **“Packaging”** means, when used as a noun, all primary and secondary containers, including cartons, shipping cases and other like matter used in packaging or accompanying the Product. When used as a verb, “Package” means to insert into a Package.

“Party” has the meaning set forth in the preamble.

“Patents” means (a) all United States patents and patent applications, including provisional patent applications, (b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from any of these, including divisionals, continuations, continuations-in-part, provisionals, converted provisionals, and continued prosecution applications, (c) any and all patents that have issued or in the future issue from the foregoing patent applications ((a) and (b)), (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including reissues, re- examinations inter partes review, post-grant review, supplemental reviews and extensions (including any patent term extensions, patent term adjustments or similar) of the foregoing patents or patent applications ((a), (b) and (c)) and (e) any similar rights, including so-called pipeline protection, or any importation to any of such foregoing patent applications and patents.

“PDUFA Program Fees” means the annual fee assessed by the FDA on prescription drugs pursuant to Section 736(a) of the FD&C Act and any successor or similar fees.

“Person” means an individual, a corporation, a general partnership, a limited partnership, a limited liability company, a limited liability partnership, an association, a trust or any other entity or organization, including a Governmental Authority.

“Pharmaceutical Producer Price Index” means the “Producer Price Index – Pharmaceutical Preparations” (Code PCU325412325412) published by the U.S. Bureau of Labor Statistics (which as of the Effective Date is available via the following link: <https://data.bls.gov/timeseries/PCU325412325412>) or, if same is no longer published, the successor index published by the U.S. Bureau of Labor Statistics.

“Pricing Approval” means any approval or authorization of any Governmental Authority establishing prices for the Product in a jurisdiction in the Territory.

“Private Label” means Product resold under the trade name or house brand name of a retail store or chain.

“Products” means (i) Tuzistra XR having as its active ingredients codeine polistirex and chlorpheniramine polistirex in an extended release oral suspension (**“Tuzistra XR”**) and (ii) CCP-08 (**“CCP-08”**), for which marketing approval has been sought by TRIS in the United States under NDA # 209561, in each case formulated to be orally consumed, and to be supplied by TRIS hereunder. Unless the context indicates otherwise the term “Product” refers to both AG Product, if any, and Product that is not AG Product. Each of Tuzistra XR and CCP-08 is referred to as a Product.

“Product Claim” has the meaning set forth in Section 13.3.

“Product NDA” means the NDA obtained by TRIS related to a Product.

“Product Specifications” means the specifications for a Product set forth by TRIS in the NDA for such Product, as the same may be amended by TRIS from time to time based on FDA input, and otherwise.

“Product Technology” with respect to a Product means TRIS’ Intellectual Property Rights with respect to such Product.

“Quality Agreement” is defined in Section 8.3.

“Quarterly Payment Report” has the meaning set forth in Section 6.3(b).

“Recall” has the meaning set forth in Section 5.5.

“Receiving Party” has the meaning set forth in Section 10.1(a).

“Regulatory Approval” means the license or marketing approval by the FDA that is necessary as a prerequisite for marketing the Product in the Territory.

“Reimbursement Approval” means any approval or authorization of any Governmental Authority establishing a health insurance or drug reimbursement scheme for the Product in a jurisdiction in the Territory.

“Regulatory Authority” means the FDA, and/or any successor official body, whose approval is required by Applicable Law to Market, manufacture, test and/or Package a Product in any jurisdiction in the Territory.

“Regulatory Documentation” means all applications, registrations, licenses, authorizations and approvals (including all INDs and Regulatory Approvals), all correspondence submitted to or received from Regulatory Authorities (including minutes and official contact reports relating to any communications with any Regulatory Authority) and all supporting documents and all clinical studies and tests, solely relating to a Product, and all data contained in any of the foregoing, including all INDs, drug approval applications, regulatory drug lists, advertising and promotion documents, clinical data, adverse event files and complaint files but excluding Drug Master Files.

“Rejection Notice” has the meaning set forth in Section 5.4(a).

“Royalty Make Whole Payment” has the meaning set forth in Section 6.4(a).

“Royalty Payment” has the meaning set forth in Section 6.3(e).

“Royalty Term” means with respect to each Product the period from the Effective Date and shall expire, on a Product-by-Product basis, upon the later of (i) twenty (20) years from such Product’s First Commercial Sale, (ii) the last to expire TRIS Patent containing a claim Covering such Product, or (iii) a Third Party Generic Launch of a Generic Equivalent of such Product.

“SEC Reports” shall have the meaning ascribed to such term in Section 11.3.

“Section” means any section of this Agreement.

“Securities” means the Shares and the common stock into which the Shares are convertible.

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

“Series D Preferred Stock” means AYTU’s Series D Convertible Preferred Stock, par value, \$0.0001 per share.

“Service Level” means, with respect to a Product, for any period of consecutive months, the quotient resulting from dividing (a) the actual quantity of conforming Product that TRIS delivers to AYTU during that period in fulfillment of AYTU’s Firm POs for such Product, by (b) the total quantity of such Product that AYTU requests, in accordance with the delivery terms specified in Section 5.2 (and the forecast requirement of Section 5.1), to be delivered to AYTU during that period based on AYTU’s ordered quantities, expressed as a percentage, after giving effect to the last sentence of the first paragraph of Section 5.3.

“**Shares**” means the shares of Series D Preferred Stock issued or issuable to TRIS pursuant to this Agreement.

“**Sublicensee**” is defined in Section 3.1.

“**Subsequent Forecast**” has the meaning set forth in Section 5.1.

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s income, gains and losses and shall be the sole managing director, manager or general partner of such business entity (other than a corporation), as applicable, or control the majority of managing directors, managers or general partners of such business entity (other than a corporation), as applicable, and such sole, or majority of, the managing directors, managers or general partners control such business entity. The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“**Supply Interruption**” has the meaning set forth in Section 5.7(b).

“**Supply Resumption Notice**” has the meaning set forth in Section 5.7(c).

“**Take and Pay Event**” has the meaning set forth in Section 9.3(a)(v).

“**Term**” means the period of time specified in Section 9.1.

“**Territory**” means the United States (including all of its states, territories and possessions).

“**Third Party**” means any entity other than TRIS or AYTU, and their respective Subsidiaries.

“**Third Party Generic Launch**” means with respect to a Product, the first commercial shipment of Generic Equivalent of such Product by a Third Party to customers in the Territory.

“**Trademark**” shall include any word, name, symbol, color, designation or device or any combination thereof, including any trademark, trade dress, brand mark, service mark, trade name, brand name, logo or business symbol, whether or not registered.

“**Transfer Price**” has the meaning set forth in Section 6.1(a).

“**Triggering Event**” has the meaning set forth in Section 5.7.

“**TRIS**” has the meaning set forth in the preamble.

“**TRIS’ Fault**” has the meaning set forth in Section 5.5(a).

“**TRIS Indemnified Party**” has the meaning set forth in Section 13.1(a).

“**TRIS Marks**” has the meaning set forth in Section 4.10(a).

“**TRIS Patent Rights**” has the meaning provided in Section 9.2(d).

“**TRIS Regulatory Documentation**” means, with respect to a Product, the Regulatory Documentation prepared for such Product by or on behalf of TRIS.

“**TRIS Royalty Payments**” has the meaning provided in Section 6.9(c).

“**Tuzistra XR**” is defined in the definition of Product.

“**Unit**” means, a [**] bottle or such alternative bottle size as set forth in the applicable Product Specifications.

“**Upfront Cash Payment**” means a payment of [**] from AYTU to TRIS on the Effective Date.

“**Upfront Stock Issuance**” means the issuance on the Effective Date of 400,000 shares of Series D Preferred Stock to TRIS.

“**WAC**” means wholesale acquisition cost.

ARTICLE II – REGULATORY

2.1 General.

(a) On or promptly following the Effective Date, as consideration for the Upfront Cash Payment and Upfront Stock Issuance, TRIS shall transfer the Tuzistra XR Product NDA to AYTU and shall (i) send to the FDA (with a copy to AYTU) any required properly executed forms (i.e., FDA Forms 356h and 1571, if applicable) and a letter transferring the NDA for such Product to AYTU and (ii) provide the TRIS Regulatory Documentation related to such Product, excluding any DMFs or the contents thereof, to AYTU.

(b) TRIS shall use Commercially Reasonable Efforts to (i) obtain Regulatory Approval of an NDA for CCP-08; and (ii) interact with the FDA regarding such Product. TRIS, at all times until Regulatory Approval for such Product, shall remain the owner of the NDA for the Product. On a Fiscal Quarter basis during the Term until Regulatory Approval, and at such additional times as AYTU may reasonably request in writing, TRIS shall advise AYTU of the status of receipt of FDA approval of the NDA for such Product. Unless otherwise agreed to by the Parties in writing, TRIS shall bear the costs and expenses relating to the Development of the Product and obtaining any Regulatory Approval. Without limiting the generality of the foregoing, TRIS shall pay the human drug application and supplement fees, assessed under Section 736(a)(1) of the FD&C Act, related to the filing and prosecution of Regulatory Approval of the CCP-08 Product until the FDA's granting of approval to Market the Product in the United States. TRIS will provide notice to AYTU within three Business Days of receipt of Regulatory Approval of CCP-08. Within ten (10) Business Days of TRIS' delivery of such notice, AYTU shall pay to TRIS [**] in immediately available funds ("**NDA Approval Milestone**"). For the avoidance of doubt, TRIS shall be responsible for payment of all fees payable with regard to CCP-08 up to and including Regulatory Approval, including the NDA submission PDUFA fee for CCP-08, but excluding any PDUFA Program Fee assessed upon approval. Following receipt of the NDA Approval Milestone, and as consideration for the NDA Approval Milestone TRIS shall transfer the CCP-08 Product NDA to AYTU and shall (i) send to the FDA (with a copy to AYTU) any required properly executed forms (i.e., FDA Forms 356h and 1571, if applicable) and a letter transferring the NDA for such Product to AYTU and (ii) transfer the TRIS Regulatory Documentation related to such Product, excluding any DMFs or the contents thereof to AYTU.

(c) The CMC section of a Product NDA will reference TRIS' DMF for such Product. TRIS shall solely and exclusively own the DMFs for the Products and the information contained therein, and AYTU shall have no ownership interest in such DMFs or any right to access the contents thereof. TRIS shall be responsible for assuring that throughout the Term of each Product each such DMF shall be in the form appropriate for (i) filing with the Regulatory Authorities in the United States, complying with all requirements under Applicable Law, including but not limited to those specified in 21 C.F.R. 314.420, regarding the referencing of DMFs in FDA submissions, and (ii) obtaining and for maintaining the NDAs for the Products in the United States. AYTU shall have the right of reference to all DMFs for all Products, solely for the purpose of filing for, maintaining and supplementing any Regulatory Approval in the Territory, provided that AYTU shall bear any expenses (including reasonable and documented out-of-pocket expenses of TRIS) in respect of exercising any such right of reference.

(d) During and after the Term, AYTU shall permit TRIS access to, and hereby grants TRIS, at no cost or fee, the perpetual and irrevocable right to reference and use (and for such purpose, copy), whether within or without the Territory, all Regulatory Documentation Controlled by AYTU for TRIS' or its Affiliates use in the Development, manufacture, Regulatory Approval and/or Marketing of any pharmaceutical product of TRIS, its Affiliates or any licensee, including, without limitation, any Product outside of the Territory. In furtherance of the foregoing but for no other purpose, AYTU shall, promptly upon the request of TRIS, deliver a letter to the FDA (or the relevant Regulatory Authority) authorizing TRIS to reference and use the applicable Regulatory Documentation Controlled by AYTU related to Products (including, without limitation, the Product NDAs) in the Territory, at no cost or fee, for TRIS' use in the Development and/or regulatory approval of any such pharmaceutical products within or without the Territory. Without limiting the foregoing, if requested, AYTU shall provide to TRIS a copy, at TRIS' expense, of the entire "**dossier**" relating to such Regulatory Approval (including, without limitation, the clinical data package and all raw data supporting same), provided that TRIS shall bear any expenses (including reasonable and documented out-of-pocket expenses of AYTU) in respect of exercising any such right of reference or obtaining such information. AYTU shall, on written request by TRIS or its Affiliate or sublicensee, provide to the requesting party and to any specified Regulatory Authority a letter, in the form reasonably required by the requesting party, acknowledging that the requesting party has the right of reference to any such Regulatory Approval for such purposes. Such right of reference attaches to the rights to such pharmaceutical products, and AYTU shall ensure that any transferee or assignee of rights in the applicable Product shall also grant such rights of reference to TRIS and its Affiliates and sublicensees. AYTU acknowledges and agrees that TRIS Regulatory Documentation has application beyond the Products subject to this Agreement, and subject to Article 10 constitutes TRIS' Confidential Information; and TRIS acknowledges and agrees that AYTU Regulatory Documentation, subject to Article 10, constitutes AYTU's Confidential Information.

(e) During and after the Term, each Party shall reasonably cooperate with other Party and provide information and documents in its possession or Control as the other Party may reasonably request (specifically excluding the provision by TRIS of CMC information as contemplated in 2.1(c)) as necessary for such other Party's compliance with regulatory requirements and other Applicable Laws related to the Products.

2.2 Maintenance of Regulatory Approval. AYTU shall be responsible for all fees in connection with the transfer of a Product NDA (whether arising prior to or upon such transfer and whether relating to Tuzistra XR or CCP-08), including fees arising in connection with additional documents required to be filed prior to, in anticipation of or upon transfer of the NDA. AYTU shall be responsible for the PDUFA Program Fee for the 2019 FDA Fiscal Year and for the PDUFA Program Fees for all subsequent FDA Fiscal Years during the Term, it being understood that such PDUFA Program Fee for the 2019 FDA Fiscal Year has been paid by TRIS with respect to Tuzistra XR and as a result AYTU shall pay the same to TRIS on the Effective Date. Following such transfer of ownership of a Product NDA (whether relating to Tuzistra XR or CCP-08), AYTU shall during the Term of a Product, at its sole expense, be responsible for maintaining and shall use Commercially Reasonable Efforts to maintain the NDA for such Product (other than the DMFs with respect thereto), including the filing of all annual and other reports or filings required by the FDA or any other Governmental Authority, the performance and submission of stability studies on batches of such Product as may be required under FDA regulations (it being understood that such studies will be conducted by TRIS) and the preparation and filing of any notices, amendments or supplements as may be required to change or add another source of supply of the APIs for such Product and the payment of PDUFA Program Fees (in addition to the 2019 PDUFA Program Fee as aforesaid) and all other fees payable to the FDA (other than the PDUFA submission/application fee for CCP-08). To the extent not already held by TRIS, AYTU shall promptly provide TRIS (other than with respect to pharmacovigilance which will be governed by Section 2.4 and the Safety Data Exchange Agreement contemplated therein) with complete copies of all applications, submissions, filings and regulatory correspondence to or from the FDA or other Regulatory Authority relating to a Product. AYTU will file and maintain the Product drug listing under its labeler code and will submit all marketing materials to OPDP (formerly DDMAC) with a copy to TRIS. For the avoidance of doubt all post-marketing clinical trials and commitments with respect to Products shall be the sole responsibility, and at the sole cost and expense of AYTU. Notwithstanding anything to the contrary contained in this Agreement, changes to a Product NDA that relate in any respect to the information in TRIS' DMF, as the same may be amended, shall be made solely as directed by TRIS and AYTU agrees to promptly make such changes and associated FDA filings as directed by TRIS. For the avoidance of doubt, if changes made or proposed to be made by TRIS in its DMF relating to CMC for a Product, are also required to be reflected in other parts of the NDA, or otherwise reported to the FDA, then AYTU will make such filings in the form and on the timetable requested by TRIS, at AYTU's expense.

2.3 Ownership of Technical Information. As between the Parties, (a) all Intellectual Property Rights and inventions related primarily to a Product, whether developed pursuant to this Agreement or otherwise, shall be owned solely by TRIS during and after the Term of such Product, and (b) all Intellectual Property Rights used in the formulation, manufacture, Labeling and/or Packaging of a Product (excluding AYTU Marks), whether developed pursuant to this Agreement or otherwise shall be solely owned by TRIS during and after the Term of such Product.

2.4 Adverse Event Reporting.

(a) The Parties will negotiate and enter into a Safety Data Exchange Agreement for the Products in a form mutually agreed to before the Launch of the first Product. AYTU shall prepare all adverse drug experience reports to be filed with the FDA pursuant to 21 CFR §§ 314.80(b) and (c) and provide copies to TRIS prior to the date required to be filed pursuant to such regulations, and where practicable at least five (5) days prior to such date. AYTU as the Product NDA holder shall file such reports with the FDA. AYTU will comply with Schedule 7.11 of the Asset Sale Agreement (dealing with pharmacovigilance) as if it were TRIS and provide to TRIS copies of all written communications provided to or by it by Former Owner and TRIS will provide to AYTU all information provided to it pursuant to such schedule by the Former Owner. Until May 31, 2019, AYTU will timely provide to TRIS, field alerts, warning letters and adverse event reports, and other information reasonably requested by TRIS to enable TRIS to comply with its monthly reporting obligations under the last sentence of Section 7.12 of the Asset Sale Agreement.

ARTICLE III

GENERAL COMMERCIAL OBLIGATIONS

3.1 Exclusive Distribution. TRIS hereby grants to AYTU the exclusive right (except as expressly stated herein, even as to TRIS and its Affiliates) to Market the Product solely as a branded product (expressly excluding a non-branded generic or a Private Label product) in the Territory during the Term. Such exclusive right (i) is non-sub-licensable except as provided in this Section 3.1 and (ii) may only be transferred in accordance with an assignment of this Agreement pursuant to Section 14.8. AYTU may appoint sublicensees with TRIS's prior written consent (each, a "**Sublicensee**"), which consent shall not be unreasonably withheld, conditioned or delayed. Each sublicense agreement shall provide for the following: (i) AYTU guarantees (pursuant to a guaranty acceptable to TRIS) and is responsible and liable to TRIS for the making of all payments due, and the making of any reports under this Agreement, with respect to sales of any Product by its Subsidiaries or Sublicensees and their compliance with all applicable terms of this Agreement (as if there was no Sublicensee); (ii) such sublicense agreement permits AYTU to assign to TRIS such sublicense agreement; (iii) such sublicense agreement requires such Sublicensee to observe all other applicable terms of this Agreement; and (iv) each such Affiliate or Sublicensee agrees in writing with TRIS to maintain appropriate and accurate books and records and to permit TRIS to inspect and copy such records and visit such Sublicensee's facilities and to observe all other applicable terms, of this Agreement. No right or license other than those specifically granted to AYTU under this Section 3.1 are granted, and rights not specifically granted to AYTU herein are hereby explicitly retained by TRIS, including, without limitation the right to manufacture each Product and to exclusively supply each Product to AYTU (except as otherwise expressly set forth in this Agreement).

3.2 Supply. Subject to the terms and conditions of this Agreement, from and after the Effective Date, during the Term of a Product: (1) TRIS shall use Commercially Reasonable Efforts to manufacture, or have manufactured, Label and Package, and supply to AYTU, all of AYTU's and its Subsidiaries' and/or sublicensees' requirements of such Product and (2) except as expressly provided in Section 6.9, TRIS shall not manufacture such Product for, or supply a Product to, any Third Party for sale in the Territory without the prior written consent of AYTU. Subject to the terms and conditions of this Agreement, and without limiting any other restrictions contained in this Agreement, from and after the Effective Date, during the Term of a Product AYTU shall purchase all of AYTU's and its Subsidiaries' requirements of such Product from TRIS (except as otherwise set forth in this Agreement).

3.3 Covenant Not to Market Competing Products. Except as expressly contemplated by the terms of this Agreement, the Parties and their respective Subsidiaries shall not, and shall not negotiate to or agree to, (1) develop, file for Regulatory Approval, acquire, license, manufacture anywhere for use in the Territory, or (2) Market or otherwise commercialize in or for the Territory, any pharmaceutical product that is (A) a Generic Equivalent to a Product, (B) an AG Product with respect to a Product, or (C) any extended release or delayed release prescription cough/cold medicine containing codeine, either alone or with a Third Party (each, a "**Competing Product**") during the Term of a Product. Notwithstanding the foregoing, clause (C) shall not prevent either Party from developing, manufacturing and Marketing, a Generic Equivalent (whose approval is or will be based on an ANDA) of a Third Party extended release or delayed release prescription cough/cold medicine containing codeine product which Third Party product was approved pursuant an NDA and such product shall not be deemed a Competing Product. If TRIS engages any Third Party to use TRIS' modified release technology for liquid suspension products to manufacture Product, it shall enter into an agreement with such Third Party whereby such Third Party agrees not to Market a Generic Equivalent to such Product during the Term of such Product.

3.4 Packaging and Labeling. The Parties shall reasonably cooperate to change the Label of Tuzistra XR so that such Product may be Launched as soon as reasonably practicable after the Effective Date (the "**Tuzistra XR Initial Label Changes**"). Within three (3) months of the Effective Date, AYTU shall supply to TRIS, in a timely fashion, its logo and the layout required to Label the CCP-08 Product in accordance with Applicable Laws and Section 4.10(a). TRIS shall be responsible, at its sole cost and expense, for securing any approvals required by Agencies in the Territory or other applicable Regulatory Approvals for the initial Label for the CCP-08 Product, and shall use Commercially Reasonable Efforts, at its own cost and expense (including stability testing) to develop a bottle size smaller than [**] and larger than [**], which the Parties currently expect will be a [**] bottle size (the "Medium Bottle Size") with the exact size determined in TRIS' sole discretion after consultation with AYTU for the Products; provided however, that costs and expenses of Labeling design (except for the Tuzistra XR Initial Label Changes) and filings and interactions with Regulatory Authorities shall be at the sole cost and expense of AYTU for any post-NDA Approval Regulatory Approval. All changes to Labels or Packaging prior to Regulatory Approval shall be at AYTU's sole cost and expense. Any changes or supplements to the Labeling for any Product following the transfer of the NDA for a Product to AYTU shall be at AYTU's sole cost and expense; *provided, however*, that the costs and expenses of the Tuzistra XR Initial Label Changes, other than incurred with respect to filings and interactions with Regulatory Authorities, shall be at TRIS' sole cost and expense. In the event that AYTU wishes to modify or change the Label for a Product, other than such changes to the Label as of the Effective Date on Tuzistra XR to effectuate the Tuzistra XR Initial Label Changes, AYTU shall provide at least sixty (60) days' advance notice of such desired change to TRIS and forward such modifications or changes to TRIS for incorporation into the Packaging and Labeling of such Products. All reasonable costs relating to changes in the Labels or Packaging, other than changes with respect to the Label of Tuzistra XR existing as of the Effective Date which are necessary to effectuate the Tuzistra XR Initial Label Changes, including artwork, as well as destruction and other costs (including TRIS' reasonable and documented out-of-pocket costs and expenses) relating to Labels or Packaging that are no longer usable, shall be paid by AYTU to TRIS within thirty (30) days of invoice to AYTU including, for example, expenses of Labels or Packaging materials that are no longer useable by TRIS in the Packaging or Labeling of the Products because of (a) TRIS' reliance on the Forecasts provided pursuant to Section 5.1 hereof, or (b) changes requested by AYTU.

3.5 Patent Marking. The Products shall be marked with the number of each TRIS issued patent that applies to such Products in a manner to provide sufficient notice under 35 U.S.C. § 287(a) and other Applicable Law. In the event that the Product cannot be marked itself, the patent notice shall be placed on associated tags, labels, packaging, or accompanying documentation, either electronic or paper, as appropriate to provide sufficient notice under 35 U.S.C. § 287(a) and other Applicable Law.

3.6 Signing Payment, and Milestone Payments. Simultaneous with the Parties' execution of this Agreement, in addition to reimbursing TRIS via wire transfer for the [**] 2019 PDUFA Program Fee pursuant to Section 2.2, AYTU shall pay TRIS the Upfront Cash Payment via wire transfer of immediately available funds as directed by TRIS, and issue and deliver to TRIS stock certificates (or electronic delivery as may be requested by TRIS) for the Upfront Stock Consideration, which payments and issuance shall be non-refundable and non-creditable. In addition, AYTU shall pay the following non-refundable and non-creditable one-time milestone payments (each of which shall be payable by wire transfer in immediately available funds as directed by TRIS): (i) the NDA Approval Milestone following NDA Approval of CCP-08, as set forth in Section 2.1(b); (ii) [**] payable on the earlier of (A) the third anniversary of the Effective Date and (B) the date when cumulative combined aggregate Net Sales of all Products since the Effective Date, by AYTU, its Subsidiaries and Sublicensees exceed [**], and (iii) [**] if and when cumulative combined aggregate Net Sales of all Products since the Effective Date by AYTU, its Subsidiaries and Sublicensees exceed [**]. For the avoidance of doubt, for purposes of each of the foregoing clauses (ii) and (iii) cumulative combined aggregate Net Sales of the Products by AYTU and its Subsidiaries shall, in each such case, be calculated from the Effective Date through the applicable date of determination and no payment made or payable pursuant to any such clause shall be credited against or otherwise reduce any payment payable under another clause (so that total payments made and required to be made pursuant to this Section 3.6(a) when the milestones set forth in Section 3.6(a)(i), (ii) and (iii) are achieved shall aggregate [**]).

ARTICLE IV

COMMERCIALIZATION

4.1 General Diligence Obligation. Subject to the terms and conditions of this Agreement, with respect to CCP-08, following approval of the CCP-08 Product NDA, and with respect to Tuzistra XR, after the Effective Date, AYTU will exercise Commercially Reasonable Efforts to Market the Products to customers in the Territory during the Term of each such Product in accordance with the terms of this Agreement and with Applicable Law. Such efforts shall include, without limitation, the Launch of each Product not later than the required Launch Date for such Product, as set forth in Section 4.6, the preparation of an annual Marketing Plan for such Product, sales projections for such Product on an annual and Fiscal Quarter basis and such other responsibilities as more specifically provided herein. Without limiting the foregoing, AYTU shall:

- (i) Perform pre-commercialization analysis, planning, market preparation and related Marketing activities for such Product in the Territory;
- (ii) Use Commercially Reasonable Efforts to Market such Product in the Territory (in the case of CCP-08 following TRIS' receipt of Regulatory Approval of such Product), regardless of whether such Product has been listed on any formulary;

- (iii) Maintain records, in sufficient detail, which shall be complete and accurate in all material respects to reflect activities and results in connection with the Marketing of such Product;
- (iv) Use Commercially Reasonable Efforts to retain sufficient personnel who are qualified and experienced in the conduct of AYTU's responsibilities in the Marketing of such Products;
- (v) Use Commercially Reasonable Efforts to ensure that its sales force personnel are trained and knowledgeable about the Product, with AYTU to be responsible if such sales force personnel make any unauthorized or inaccurate representations concerning such Product;
- (vi) Discuss Marketing strategies for such Product with TRIS on at least twice per Fiscal Year basis (including, without limitation, discussing and reviewing Net Sales compared to AYTU's forecasts and evaluating progress of material activities under the Marketing Plan);
- (vii) Review with TRIS AYTU's efforts to Launch such Product in the Territory (in the case of CCP-08, following Regulatory Approval), which review shall occur as frequently as either Party shall reasonably request; and
- (viii) [**].

The purchase order for the Initial Launch Quantities for Tuzistra XR will be issued to TRIS no later than one Business Day after the Effective Date.

4.2 Marketing Plan. AYTU will be responsible for assessing the market opportunities for the Product in the Territory and preparing and providing to TRIS, for TRIS' review and comment, within thirty (30) days of the execution of this Agreement, a marketing plan for the Tuzistra XR Product and sixty (60) days after NDA Approval of CCP-08, a marketing plan for the CCP-08 Product (each such marketing plan for Tuzistra XR and CCP-08, a **"Marketing Plan"**), which Marketing Plan, and each subsequent Marketing Plan delivered in accordance with this Section 4.2, shall set forth AYTU's plan, strategy and proposed activities, to Market such Product in the Territory. Each Marketing Plan will include as appropriate, without limitation, the following elements:

- (i) A description of AYTU's general strategy with respect to pre-Launch and post- Launch Marketing, reimbursement strategies, advertising and promotion activities of the Product in the Territory;
- (ii) An estimated time schedule for the performance of the Marketing activities;
- (iii) A description of AYTU's initial and long term pricing strategy in the Territory; and
- (iv) A promotional budget.

Thereafter, on an annual basis on or before each October 31 beginning October 31, 2019, AYTU will provide TRIS with a copy of AYTU's Marketing Plan for each Product that has received Regulatory Approval for the following calendar year for review and adoption. TRIS may communicate comments to AYTU in respect of all Marketing Plans and AYTU agrees to consider such comments in good faith; provided that, subject to AYTU's Marketing obligations under this Agreement, the final Marketing Plan shall be within AYTU's discretion and control.

4.3 Training. AYTU shall (at its own cost and expense) be responsible for training of all sales representatives with respect to the Marketing of the Product, including, without limitation, developing sales training materials (including scientific overview and positioning and conducting sales training and testing of sales representatives), all in compliance with Applicable Law.

4.4 Advertising and Promotion. AYTU shall develop, subject to Section 4.10 and the other provisions of this Agreement, the Trademarks with respect to the Products (which in accordance with, and subject to, Section 4.10, will contain the name "Tuzistra"), website, and other Product positioning and supporting materials, including without limitation, physician education materials. All materials used by AYTU in Marketing the Products, including print advertising, brochures, leaflet, and similar materials, shall comply in all material respects with Applicable Laws and requirements of any applicable Regulatory Authority and the terms and provisions of Section 4.10. Prior to NDA Approval of the CCP-08 NDA, AYTU shall provide to TRIS copies of such materials used by or on behalf of AYTU in Marketing of the Product for submission to the FDA, at AYTU's sole cost and expense. Copies of materials, whether or not required to be submitted to the FDA shall be provided to TRIS at least five (5) Business Days prior to their first intended use. AYTU shall not make any therapeutic claims or statements relating to the Product other than those authorized by the applicable Regulatory Authorities, and AYTU shall remain solely liable for all Marketing materials prepared by it or on its behalf.

4.5 Pricing.

AYTU shall have final decision-making authority for determining the selling price for the Product in the Territory. If either (a) during the period beginning on or after the Effective Date and ending on December 31, 2019 the WAC price of Tuzistra XR increases by a cumulative amount greater than [**] above the WAC price immediately prior to the Effective Date, which was [**] for a [**] bottle (whether through one or more price changes) or (b) during the period beginning January 1, 2020 and ending May 31, 2020 AYTU increases the WAC price of Tuzistra XR by a cumulative amount greater than [**] above the WAC price as of December 31, 2019 (whether through one or more price changes), and such increase results in an increase in rebates relating to or returns of Product sold prior to the Effective Date, as demonstrated by TRIS or the Former Owner providing evidence of such to AYTU (and having regard to historic rebate and return levels), then AYTU shall be liable to reimburse TRIS (or at TRIS' election the Former Owner) promptly (and in any event within 10 Business Days of TRIS or the Former Owner providing evidence to AYTU) for these increased costs (measured by the excess of the increase such costs over what such increase would have been had the WAC price increase been limited to [**] during the period specified in clause (a) or (b) of this Section 4.5, as applicable) incurred by TRIS or the Former Owner as a consequence of such increased rebates and returns. For example, if the WAC price at the Effective Date or at May 31, 2019, as applicable, is [**] per bottle and the WAC price increases [**] to [**] (as opposed to [**]) during the period specified in clause (a) or (b) of this Section 4.5, as applicable, then if ten bottles are returned at [**], AYTU would owe [**].

4.6 Required Launch Date. The Parties shall reasonably cooperate to Launch the Tuzistra XR Product as soon as practicable following the Effective Date. AYTU shall Launch the Tuzistra XR Product within [**] after the Effective Date and shall Launch the CCP-08 Product within [**] after NDA Approval, with the date for the CCP-08 Product reasonably adjusted to reflect the seasonality of market demand for the Product where demand is lower between April and August.

4.7 Bartering and Bundling Prohibited.

(a) AYTU and its Subsidiaries shall not accept or solicit any bartered goods or services relating to the sale of the Product.

(b) The Products shall not serve as a loss leader or be bundled with other products to serve as a loss leader. The term “ **loss leader**” shall refer to a situation in which (1) the Product is sold on terms that are less favorable than terms that could otherwise have been obtained in order to benefit sales of one or more products other than a Product and/or (2) a Product’s price is discounted to induce the sale of other products.

(c) In addition to and without limiting TRIS’ other remedies hereunder, if AYTU or its Subsidiaries or Sublicensees distribute a Product in violation of Section 4.7(b), the Net Sales shall be adjusted to reverse any discounts in such bundling and loss leader arrangement which were given to a customer that were in excess of the then customary discounts for a Product (or, in the absence of relevant data for a Product, other similar products under similar market conditions).

(d) A Product may be sold as part of any multiple product offering with any other products by AYTU or its Subsidiaries or Sublicensees (“**bundling**”), so long as any discount granted as part of such sale is allocated on a proportionate basis to such Product on the one hand and the other products in the bundle on the other hand. For example, if a Product and another product are sold under a volume discount arrangement and have a combined volume discount of \$200,000 on a total undiscounted sales price of \$1,000,000 and the units of such Product included in such discount arrangement have an undiscounted sales price of \$600,000 and the units of such other product have an undiscounted sales price of \$400,000, such discount shall not be considered a sale of such Product as a loss leader in violation of Section 4.9(b) or as part of a bundle, basket or group sale so long as no more than sixty percent (60%), or \$120,000, of such discount is allocated to such Product.

4.8 Selling Data. Simultaneous with AYTU's delivery to TRIS of the Quarterly Payment Report, AYTU shall provide a report to TRIS:

- (i) setting forth the total number of prescriptions filled for each Product in the Territory; and
- (ii) setting forth AYTU's and its Subsidiaries' sales of Product by units and revenue in the Territory.

4.9 Reports.

(a) Each Party shall promptly keep the other fully informed of all governmental and regulatory requirements, activities and plans of any Regulatory Authority including any changes thereto of which such Party becomes aware which materially affect, or are reasonably likely to materially affect, the manufacture or Marketing of the Product in the Territory.

(b) Prior to the Launch of a Product, AYTU shall report to TRIS regarding AYTU's pre-Launch Marketing activities with respect to the Product as set forth in the Marketing Plan for such Product prepared pursuant to Section 4.2.

(c) After the Launch of the Product, AYTU shall throughout the Term provide to TRIS a written report for each Fiscal Quarter showing quarterly data for the following: the number of units of a Product sold, the gross sales, and the Net Sales for such Product, including details of all necessary calculations of the same, including (i) the calculations which detail the differences between Net Sales and gross sales; (ii) the calculation of a total number of prescriptions for such Product, including by NDC number, and (iii) a statement of the amount of inventory of the Products held by AYTU, its Subsidiaries or Sublicensees as of the last day of such Fiscal Quarter. AYTU shall also provide to TRIS each statement of the amount of inventory of the Products received from any wholesaler that provides such information to AYTU either (i) at AYTU's request in its sole discretion if there is an additional charge for such report or (ii) at no additional charge (in which case AYTU shall request such reports), which statements AYTU shall request that each wholesaler provide as of the end of each Fiscal Quarter, delineating the amount of Products held by such wholesaler as of the last day of the Fiscal Quarter. AYTU shall provide such statement on a Fiscal Quarterly basis on or before the forty-fifth (45) day following such Fiscal Quarter.

(d) After the Launch of the Product, AYTU shall within forty-five (45) days after the completion of each calendar year during the Term, provide to TRIS, a report describing other selling resources deployment, including without limitation, budget and spend on Marketing compared to the Marketing Plan for the Product for such calendar year.

(e) After the Launch of a Product, AYTU shall provide, on a Fiscal Quarter basis on or before the forty-fifth (45) day following each Fiscal Quarter, a report summarizing the status of Reimbursement Approvals and Pricing Approvals and filings in terms of formulary listings and reimbursement pricing tier for such Product.

4.10 Trademarks; Logos

(a) AYTU, either itself or through a Subsidiary of AYTU, may Market the Product throughout the Territory under a Trademark or Trademarks selected by AYTU (collectively, the "**AYTU Marks**"); *provided, however*, that notwithstanding the foregoing or anything else to the contrary contained in this Agreement, it is understood and agreed that, subject to Applicable Law, the Products will be Marketed in the Territory utilizing the TRIS Mark "Tuzistra" that is referred to below or such variation thereof or other Trademark owned by TRIS that is reflected as the name of a Product in the applicable Product NDA as finally approved by the FDA, and that without TRIS' prior written consent (which may be withheld or conditioned in its sole discretion) and compliance with Applicable Law, no other Trademark, other than the TRIS Marks shall be utilized in Marketing the Product other than AYTU Trademarks consisting of the corporate name and logo of AYTU and its Subsidiaries which, subject to Applicable Law, may be used in Packaging and promotional and advertising materials for the Product which also contain the TRIS Mark, "Tuzistra," (or such other TRIS Mark reflected as the name of a Product in the applicable Product NDA ultimately approved by the FDA) and the other TRIS Marks requested to be included by TRIS in accordance with the third sentence of this Section 4.10. Except as otherwise expressly provided in this Agreement, AYTU shall own all right, title and interest in and to such AYTU Marks. Subject to Applicable Law and Section 7.4, all Labeling, Packaging, and promotional and advertising materials for a Product shall, at the request of TRIS, contain the TRIS trade name identifying TRIS as manufacturer of the Products and TRIS' LiquiXR logo (collectively, together with the name "Tuzistra" and any variation thereof or other Trademark owned by TRIS that is reflected as the name of the Product in the NDA as finally approved by the FDA, the "**TRIS Marks**"). Except as otherwise expressly provided in this Agreement, TRIS shall own all rights, title and interest in and to all such TRIS Marks. For the avoidance of doubt, TRIS Marks are not AYTU Marks. In connection with this Section 4.10: TRIS hereby grants to AYTU a non-exclusive, royalty-free license to use the TRIS Marks and the name "Tuzistra" as well as any Trademarks utilizing "Tuzistra", in the Territory, as well as TRIS' rights in the domain names www.tuzistraxr.com, www.tuzistraer.com, www.tuzistra.com, for the Term of this Agreement, in connection with the Marketing and promotion of Products as contemplated in this Agreement. The ownership and all goodwill from the use of the TRIS Marks (including, without limitation, "Tuzistra") shall vest in and inure to the benefit of TRIS. TRIS reserves all rights not expressly granted herein.

(b) Upon termination of this Agreement, if and to the extent that AYTU owns a Product-specific Trademark under or pursuant to which a Product, and not any other product, is being Marketed at the time of such termination (an "**AYTU Product Trademark**"), AYTU shall promptly assign to TRIS ownership of such AYTU Product Trademark. Upon termination of this Agreement with respect to either Product, AYTU shall, and hereby does, grant to TRIS, and shall cause its Subsidiaries to grant to TRIS, a non-exclusive, royalty-free, non-transferable, non- sublicensable license to use the applicable Trademarks of AYTU (collectively, the "**AYTU Non- Product Specific Trademarks**") used with respect to such Products that are not Product- specific, solely to the extent included on the packaging for such Product in order that TRIS can sell any inventory of such Product in TRIS' possession at the time of such termination, but in no event for a period longer than six (6) months after the expiry of the stated shelf life of any such remaining inventory of Product.

(c) As between AYTU and TRIS, AYTU hereby acknowledges the exclusive ownership of TRIS of the TRIS Marks furnished by TRIS (or its Affiliates) for use in connection with the Products. AYTU shall not, during the Term or thereafter, register, use, or attempt to obtain any right in and to any TRIS Marks or in and to any name, logo or trademark confusingly similar thereto, including, without limitation, by adding to or supplementing the TRIS Marks with additional words or phrases. As between AYTU and TRIS, TRIS hereby acknowledges AYTU's exclusive ownership rights in the AYTU Marks, and accordingly agrees that, subject to Section 4.10(b) and Section 9.3(a)(ix) solely with respect to an AYTU Product Trademark upon termination of this Agreement, at no time during or after the Term of this Agreement to challenge or assist others to challenge the AYTU Marks or the registration thereof or attempt to register any Trademarks, trade names or logo confusingly similar to such AYTU Marks, including without limitation, by adding to or supplementing the AYTU Marks with additional words or phrases.

(d) For the sake of clarity and with respect to this Section 4.10(d), TRIS is the licensor as it pertains to TRIS Marks (including, without limitation, the name "Tuzistra" and any Trademarks utilizing "Tuzistra") and licensee as it pertains to the AYTU Non-Product Specific Trademarks during the Term of this Agreement, the AYTU Product Trademarks. AYTU is the licensee as it pertains to TRIS Marks (including, without limitation, the name "Tuzistra" and any Trademarks utilizing "Tuzistra") and is the licensor as it pertains to the Non-Product Specific Trademarks during the Term of this Agreement, the AYTU Product Trademarks. Each of AYTU and TRIS are therefore "Licensor" and "Licensee," as applicable. For the purposes of this Section 4.10(d), "Licensed Trademarks" shall mean the TRIS Marks (including, without limitation, the name "Tuzistra" and any Trademarks utilizing "Tuzistra") and AYTU Marks, collectively.

(i) Licensor shall have the right to exercise quality control over the Licensee's use of the Licensed Trademarks, as applicable, to a degree reasonably necessary to maintain the validity of the Licensed Trademarks, as applicable, and to protect the goodwill associated therewith.

(ii) Licensee shall, in its packaging, sale, marketing, advertising, disposition and distribution of the Products and product packaging adhere to a level of quality regarding the maintenance of the validity of the Licensed Trademarks, as applicable, and the protection of the goodwill associated therewith consistent with the high standards of quality otherwise set by Licensee.

(iii) Licensee shall comply with all Applicable Laws in the packaging, sale, distribution, advertising, disposition and marketing of the Products and product packaging, and Licensee shall use all legends, notices, and markings as required by Applicable Law.

(iv) Licensee shall, upon reasonable request by Licensor, submit to Licensor samples of Products and product packaging and representative samples of all publicly distributed materials bearing the Licensed Trademarks or product packaging which are then currently sold or distributed, or pending sale or distribution by Licensee.

ARTICLE V

DELIVERY AND ACCEPTANCE

5.1 Forecasts. Not later than forty-five (45) days after the Effective Date (or if later, one hundred eighty (180) days prior to the date estimated by TRIS for receipt of Regulatory Approval of a Product NDA), AYTU shall provide to TRIS a rolling forecast that estimates the quantity of a Product to be purchased by AYTU for each month during the [**] period following the Launch Date (the “**Initial Forecast**”). Thereafter, at least 30 days prior to the beginning of each calendar month after the Launch Date (each, a “Forecast Delivery Date”), AYTU shall provide TRIS with a [**] rolling forecast that estimates the quantity of the Product to be purchased by AYTU for each month during such [**] period (each, a “**Subsequent Forecast**”, and together with the Initial Forecast, a “**Forecast**”) setting forth its estimated requirements for shipment by month for the Product. The [**] of each Forecast shall represent firm orders for the Product for which AYTU shall be obligated to issue Firm POs (as defined in Section 5.2(a)). All Firm POs must be with the lead times specified in Section 5.2. In the absence of receipt by TRIS within the required lead time of Firm POs requesting delivery in a given month, TRIS may treat the most recent Forecast for such month as a Firm PO for such month. All Forecasts shall be made in good faith based on AYTU’s commercially reasonable estimates of customer requirements. Each Forecast provided to TRIS hereunder shall also list the estimated number of units of inventory of Product held by AYTU and its Subsidiaries and any Sublicensees as of the date prior to the Forecast Delivery Date for which data are most recently available, and such information shall be provided by AYTU after termination and expiration of this Agreement on a monthly basis until AYTU, its Subsidiaries and any Sublicensee hold no inventory of the Product (collectively, “**Inventory Reports**”).

5.2 Purchase Orders

(a) All purchases and sales between AYTU and TRIS will be initiated by AYTU’s issuance of written purchase orders sent via e-mail, airmail or facsimile (each a “**Firm PO**”). Each Firm PO shall state Product quantities, requested delivery dates, and shipping instructions. Together with the delivery to TRIS of each Forecast, AYTU shall deliver a Firm PO to TRIS with respect to the next month for which a Firm PO is due in accordance with the following delivery terms: prior to the estimated Launch Date, no Firm PO shall request delivery less than one hundred twenty (120) days after issuance of such Firm PO, provided that with respect to Tuzistra XR, for the first [**] bottles and one batch of [**] bottles (without waiving the required Lead Time), TRIS shall use Commercially Reasonable Efforts to deliver and may deliver as soon as practicable; and after the Launch Date, no Firm PO shall request delivery less than one hundred twenty (120) days after issuance of such Firm PO. In the event AYTU does not deliver timely Firm POs corresponding to the applicable binding portions of a Forecast, TRIS may rely on the applicable binding portion of the Forecast in delivering Product to AYTU, and AYTU shall be required to take delivery of, and pay for such Product as if a Firm PO had been issued.

(b) TRIS shall use Commercially Reasonable Efforts to supply the quantities of the Product listed on each applicable Firm PO, provided such amounts do not exceed 125% of the quantities of the Product listed in the relevant and most recent Forecast for the applicable three (3) month period. TRIS’ failure to supply Product to AYTU in quantities in excess of 125% of the amounts listed in the relevant and most recent Forecast for the applicable three (3) month period shall not be a breach of TRIS’ supply obligations hereunder. Notwithstanding the foregoing, only the lesser of the amount in (I) a binding portion of a Forecast and (II) a Firm PO (as the same may be modified pursuant to the last sentence of Section 5.3) shall be taken into consideration in determining Service Level.

(c) If TRIS is unable to meet Firm POs as the result of a shortage of production capacity at TRIS' manufacturing Facility, TRIS shall promptly notify AYTU in writing and TRIS shall allocate its production capacity for liquid products to assure AYTU a priority supply of Products in such proportion (expressed as a function of equipment utilized) as the production equipment capacity actually utilized to meet orders for the Products over the previous twelve (12) month period bears to total production equipment capacity in TRIS' manufacturing Facility for liquid products over the same period.

(d) TRIS shall promptly notify AYTU in writing if, at any time, TRIS has reason to believe that it will not be able to fill an order for Product in all material respects in accordance with the delivery schedule specified in the applicable Firm PO and pursuant to the terms and conditions of this Agreement. For the avoidance of doubt if TRIS has reason to believe that it will be able to timely deliver at least 90% of the quantities of Products specified in the applicable Firm PO, then no such notification is necessary.

(e) All Products ordered by AYTU shall be in amounts consistent with the then- current minimum batch sizes (or multiples thereof). By way of example, as of the Effective Date, this equates to approximately [**] bottles or [**] bottles. Notwithstanding the foregoing, TRIS shall use Commercially Reasonable Efforts to accommodate one split batch per year of [**] and [**] bottles.

5.3 Delivery of Products. AYTU shall provide TRIS with appropriate instructions for each shipment of the Products, designating the carrier, destination, method of transport and insurance requirements. TRIS shall make available all Products supplied under this Agreement FCA (INCOTERMS 2010) TRIS' designated U.S. warehouse facility. AYTU shall pay all freight, insurance charges, taxes, inspection fees and other reasonable and documented out-of-pocket charges applicable to the shipping and transport of the Products purchased by AYTU hereunder ("**Freight Charges**"). Within five (5) Business Days following TRIS' notification by email or fax to AYTU of the availability of ordered Product, AYTU shall notify TRIS by email or fax of the date and time for pickup, and the identity of the Person (which may be AYTU) that will pick up such Product order. The date and time of pickup shall be during normal business hours and within five (5) Business Days of TRIS' notification. Notwithstanding the foregoing or anything else to the contrary contained in this paragraph, if AYTU (A) does not timely send the required notification to TRIS; (B) does not pick up the Product order as scheduled; or (C) requests that TRIS arrange for delivery, then TRIS may arrange for delivery and/or deliver Product (with its own trucks or otherwise); and the greater of \$1,000 or reasonable and documented out-of-pocket costs incurred by TRIS for Freight Charges shall be added to the Transfer Price. If TRIS' notification is within plus/minus five Business Days of the delivery date requested in the applicable Firm PO then the associated delivery shall be deemed timely. Further, if TRIS delivers between (A) 90% of Product ordered either (I) in a Firm PO or (II) in the applicable binding portion of a Forecast and (B) 110% of Product ordered (I) in a Firm PO or (II) in the applicable binding portion of a Forecast, then the Firm PO shall be deemed modified to conform to the amount delivered and TRIS shall be deemed to have fully satisfied its obligations with respect to quantities thereunder.

Title and risk of loss and damages to the Products purchased by AYTU hereunder shall pass through to AYTU and Product shall be deemed delivered upon AYTU's designated carrier or the carrier designated by TRIS pursuant to the last sentence of the preceding paragraph taking control of such Product, *provided however*, if TRIS delivers Product using its own employees then title and risk of loss shall pass upon unloading at AYTU's facility. TRIS shall provide the Product and shall include an itemized packing list with each shipment. Prior to Regulatory Approval of a Product, AYTU will store Product made available by TRIS at secure warehouse facilities and quarantine such Product until Regulatory Approval of such Product.

5.4 Acceptance and Rejection of the Product.

(a) AYTU shall notify TRIS in writing of its rejection of any Product supplied to it pursuant to this Agreement (" **Rejection Notice**") as follows: (i) in the case of defects that are readily discoverable upon a physical inspection of a Product shipment, AYTU shall deliver a Rejection Notice within thirty (30) calendar days after AYTU or its designated facility has received such Product shipment, or (ii) in the case of a latent defect or any defect that was not obvious and could not be readily discovered from a physical inspection of the Product supplied, AYTU shall deliver a Rejection Notice within ten (10) calendar days of the date that AYTU discovers such defect, but in any event prior to the expiration date of the shelf life of such Product. Failure to provide a Rejection Notice to TRIS within the applicable period shall constitute acceptance by AYTU of the shipment for purposes of clause (i) or (ii) above, as applicable. Rejection Notices that are provided by AYTU shall state in reasonable detail (sufficient to enable TRIS to identify the nature of the problem for tests or studies to be conducted by or on its behalf or to dispute the same) the reason why AYTU believes the Product does not conform to the Product Specifications and/or the Product warranties contained in Section 8.1. AYTU shall, within five (5) Business Days of the delivery by AYTU of any such Rejection Notice, provide samples of the Product being rejected, if appropriate, and copies of written reports relating to tests, studies or investigations performed to date by or on behalf of AYTU on the Product being rejected.

(b) AYTU's test results or basis for rejection shall be conclusive unless TRIS notifies AYTU within ten (10) Business Days of receipt by TRIS of the Rejection Notice that it disagrees with such test results or basis for rejection. If AYTU and TRIS fail to agree within ten (10) Business Days after TRIS' notice to AYTU as to whether any Product identified in the Rejection Notice deviates from the Product Specifications or fails to materially comply with the Product warranties contained in, representative samples of the batch of the Product in question, together with mutually agreed upon questions, shall be submitted to a mutually acceptable independent laboratory or consultant (if not a laboratory analysis issue) for analysis or review. The results of such applicable independent evaluation shall be binding upon the parties. If TRIS and AYTU determine by agreement, or if such evaluation certifies that the Product was properly rejected by AYTU, AYTU may reject the Product in the manner contemplated by Section 5.4(d). The Party that is determined to have been incorrect in its determination of whether the Product complies fully with the Product Specifications and the Product warranties contained in shall pay all of the costs of such independent evaluation, including, without limitation, laboratory fees and additional shipping and transportation costs. Should the fees associated with the work conducted by the independent laboratory or consultant be due up front, AYTU and TRIS shall each pay fifty percent (50%) of such upfront fees; *provided*, that if it is determined by the independent laboratory or consultant that either Party shall have been incorrect in its determination as to whether the Product complies fully with the Product Specifications and the Product warranties contained in Section

8.1, such incorrect Party shall reimburse the other Party for such fifty percent (50%) of such fees within ten (10) Business Days of such determination by the independent laboratory or consultant, as the case may be.

(c) If any order of a Product is rejected by AYTU, AYTU's obligation to pay TRIS in respect of the rejected Product shall be suspended until such time as the rejection is determined or otherwise agreed to be incorrect per Section 5.4(b). If only a portion of an order is rejected, only the duty to pay the amount allocable to such rejected portion shall be suspended.

(d) In the event an order or partial order is rejected by AYTU pursuant to the provisions of this Section 5.4, the non-conforming shipment of a Product, or the non-conforming portion thereof, shall be held for TRIS' disposition, or shall be returned to TRIS, in each case at TRIS' expense, as directed by TRIS. TRIS shall use its Commercially Reasonable Efforts to replace the non-conforming shipment of such Product, or the non-conforming portion thereof, with conforming Product as soon as reasonably practicable after receipt of notice of rejection thereof, and in any event will do so within the later of forty-five (45) calendar days after receipt of notice of rejection thereof and thirty (30) calendar days of an independent testing decision in favor of AYTU, at no cost to AYTU. TRIS shall have no obligation to AYTU or to any Third Party with respect to any defective Product manufactured by TRIS to the extent that such defect is attributable to the failure by AYTU, its Subsidiaries, or any Third Party to properly store, transport or care for such Product after AYTU is notified of the availability for pick-up of such Product at TRIS' warehouse in accordance with Section 5.3. TRIS shall make arrangements with AYTU for the return or destruction, at TRIS' option and cost, of any rejected Product. All such return shipping charges or costs of destruction shall be paid by TRIS. In the event that AYTU has paid for rejected Product, and such Product has not been satisfactorily replaced, TRIS shall promptly extend a credit to AYTU for the full amount paid by AYTU for such Product, together with related costs, or dispute such claim and, if necessary, initiate dispute resolution in accordance with Section 5.4(b) of this Agreement. For purposes of clarity, the Parties acknowledge and agree that notwithstanding any other provision in this Section 5.4, AYTU will be required to pay, without credit from TRIS, either (i) for the initial non-conforming portion of the order or (ii) for its replacement, provided that TRIS supplies such replacement for the Product order, but not both (i) and (ii).

5.5 Product Recall. In the event that either Party believes it may be necessary to conduct a recall, field correction, market withdrawal, stock recovery, or other similar action with respect to any Product which was sold under this Agreement (a "**Recall**"), AYTU and TRIS shall promptly consult with each other in good faith as to how best to proceed, it being understood and agreed that the final decision as to any Recall of any Product sold by AYTU or its Subsidiaries or its Sublicensees shall be made by AYTU, as AYTU is responsible for notifying regulatory agencies of any recall market withdrawals, etc., *provided, however*, that neither Party shall be prohibited hereunder from taking any action that it is required to take by Applicable Law. Each of TRIS and AYTU shall make a permanent, complete and accurate record of all costs incurred by it in connection with any Product recall.

(a) To the extent any Recall or seizure of any Product sold by AYTU or its Subsidiaries or Sublicensees is caused by or is the result of the breach or default of any covenant, warranty or obligation in this Agreement by TRIS (including a breach of the Product warranties contained in Section 8.1), or the negligence, mistake or omission of TRIS (or any Approved Manufacturer engaged by TRIS) (any of such events being referred to as "**TRIS' Fault**"), TRIS shall (i) reimburse (or at AYTU's option, credit) AYTU for all reasonable and documented out-of-pocket costs and expenses reasonably incurred by AYTU in connection with the Recall or seizure, including, without limitation, replacing the Product subject to the Recall or seizure in accordance with the provisions of Section 5.4; and (ii) as provided in Section 13.1(b), indemnify and hold AYTU and its Subsidiaries harmless from and against any and all damages to or claims by Third Parties associated with or resulting from any such Recall or seizure.

(b) To the extent any Recall or seizure of any Product sold by AYTU or its Subsidiaries or its Sublicensees is caused by or is the result of the breach or default of any covenant, warranty or obligation in this Agreement or any applicable sublicense agreement by AYTU or its Subsidiaries or its Sublicensees or the negligence, mistake or omission of AYTU (or any subcontractor or other Third Party engaged by AYTU or its Subsidiaries or its Sublicensees) (any of such events being referred to as "**AYTU's Fault**") AYTU shall: (i) reimburse (or at TRIS' option, credit) TRIS for all reasonable and documented out-of-pocket costs and expenses incurred by TRIS in connection with the Recall or seizure; and (ii) as provided in Section 13.1(a), indemnify and hold TRIS and its Subsidiaries harmless from and against any and all damages to or claims by Third Parties associated with or resulting from any such Recall or seizure.

(c) If the cause or reason of any Recall or seizure of any Product sold by AYTU or its Subsidiaries or its Sublicensees is the result of TRIS' Fault and AYTU's Fault, then TRIS and AYTU shall be responsible for the payment of reasonable and documented out-of-pocket costs and expenses incurred by either Party in connection with the Recall or seizure and all damages to or claims by Third Parties associated with or resulting from such Recall or seizure in proportion to the relative fault of each Party in causing such Recall or seizure.

(d) If there is any Recall or seizure of any Product sold by AYTU or its Subsidiaries or its Sublicensees and the cause or reason of such Recall or seizure is not the result of TRIS' Fault or AYTU's Fault, the Parties shall be each be responsible for and pay one-half (1/2) of any and all losses, costs, and expenses reasonably incurred by either Party in connection with such Recall or seizure and any damages to or claims by Third Parties associated with or resulting from any such Recall or seizure.

(e) If TRIS and AYTU cannot agree which party is at fault or the relative degree of fault if both Parties are at fault, then such Dispute shall be resolved in accordance with Section 14.3.

(f) Each Party shall keep the other fully informed of any notification or other information, whether received directly or indirectly, which might affect the marketability, safety or effectiveness of a Product, or which might result in liability issues or otherwise necessitate action on the part of either party, or which might result in Recall or seizure of Product.

(g) Prior to any reimbursement pursuant to this Section 5.5 the Party claiming reimbursement shall provide the other Party with all available documentation of all reimbursable costs and expenses.

5.6 Approved Manufacturer.

TRIS may, at any time during the Term direct that the Products be manufactured and/or Packaged for TRIS on a subcontractor basis by a Third Party manufacturer (an "**Approved Manufacturer**"). TRIS shall be responsible under this Agreement for any Products manufactured or Packaged by an Approved Manufacturer as if such Product had been manufactured or Packaged by TRIS. If TRIS uses an Approved Manufacturer, it shall bear the costs of transferring technology to the Approved Manufacturer and the Parties' out-of-pocket regulatory filing costs in conjunction therewith, and the Transfer Price for Product shall continue to be the same price that it would have been without TRIS' use of an Approved Manufacturer.

5.7 Problems with Supply.

(a) As soon as it becomes apparent to TRIS that circumstances resulting in any failure or delay in delivery of the Product will continue for more than thirty (30) days, it shall promptly notify AYTU in writing and as soon as possible thereafter confer with AYTU to discuss the alternatives, and cooperate with AYTU as AYTU may reasonably request for AYTU to obtain a source of supply of the Product during the continuance of such circumstances, provided however, that in no event shall TRIS be required to transfer manufacturing to another manufacturer or facility or cooperate with respect thereto.

(b) In addition, if at any time or times during the Term for any reason (including a Force Majeure Event), (a) TRIS (i) fails to deliver any Product meeting the requirements of this Agreement to AYTU for [**] consecutive days following the date provided for delivery on an outstanding Firm PO and (ii) does not deliver any Product meeting the requirements of this Agreement against any other Firm POs during such [**] day period, or (b) the Service Level is not at least sixty-five percent (65%) over a period equal to the greater of (x) six (6) consecutive months, and (y) the number of consecutive whole months in which an aggregate of at least twenty (20) batches of Product are scheduled for delivery to AYTU pursuant to Firm POs issued in accordance with Section 5.2 (and the forecast requirements of Section 5.1) (each a "**Triggering Event**"), then within thirty (30) days of the occurrence of such Triggering Event, AYTU may declare a supply interruption ("**Supply Interruption**") by notice to TRIS. Neither a Triggering Event nor a Supply Interruption shall constitute a breach of this Agreement (provided TRIS is using Commercially Reasonable Efforts to supply the Product). Upon sending a timely notice to TRIS, AYTU may, notwithstanding Section 3.3 or any other provision of this Agreement, obtain all or any part of its requirements of a Competing Product for sale in the Territory from other sources and Market such Competing Product in the Territory. Such sourcing of a Competing Product by AYTU from other sources and Marketing such Competing Product as provided in this Section 5.7 will not be deemed a breach or default of any provision of this Agreement by AYTU.

(c) If AYTU obtains a Competing Product from another source pursuant to this Section 5.7 and thereafter during the Term TRIS is able to resume supplying AYTU's requirements of the Product in accordance with the provisions of this Agreement, TRIS shall promptly notify AYTU in writing that TRIS is able to resume supplying AYTU's requirements of the Product to AYTU under the terms of this Agreement and at AYTU's request, provide AYTU with reasonable evidence to AYTU's reasonable satisfaction of TRIS' ability to do so (a "**Supply Resumption Notice**"). After AYTU's receipt of a Supply Resumption Notice, AYTU will resume purchasing the Product from TRIS and TRIS will resume supplying the Product to AYTU, in accordance with the provisions of this Agreement as quickly as commercially practicable. The Supply Interruption will be deemed to have expired upon AYTU's receipt of TRIS' Supply Resumption Notice. Notwithstanding anything to the contrary contained in this Agreement, during the pendency of a Supply Interruption and until AYTU re-commences the purchase of Product exclusively from TRIS following a Supply Resumption Notice, AYTU shall remit to TRIS Royalty Payments with respect to the Net Sales from sales of the Competing Product as if such Competing Product were the Product under this Agreement, in accordance with Section 6.3.

(d) If TRIS is not in compliance with Section 5.3, including the last sentence of the first paragraph thereof with respect to a Firm PO, then AYTU, at its option and in addition to the rights and remedies specified in this Agreement, shall have the option, in AYTU's sole discretion, to (a) extend the required delivery date for such Firm PO, or (b) cancel the applicable Firm PO.

(e) If, after the commencement of a Supply Interruption for which TRIS has not provided to AYTU a Supply Resumption Notice within six (6) months of AYTU's declaration of a Supply Interruption (pursuant to Section 5.7(b)), AYTU is unable to engage an alternate Third Party supplier to begin supplying a Competing Product to AYTU within six (6) months after AYTU's declaration of a Supply Interruption (pursuant to Section 5.7(b)), AYTU may terminate this Agreement by written notice to TRIS.

ARTICLE VI – PAYMENT OF TRANSFER PRICE; ROYALTY; ACCOUNTING

6.1 Transfer Price; Purchase of Product.

(a) TRIS shall supply each Unit of Product for commercial sale in the Territory to AYTU during the Term of such Product at the following prices (the "**Transfer Price**"):

(i) The price for Tuzistra XR shall be [**] per [**] bottle and [**] per [**] bottle; *provided, further, however,* that, notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for TRIS to supply such [**] size samples after a Third Party Generic Launch so long as AYTU's Net Sales of Product (excluding AG Product) do not exceed [**] in any consecutive 12 month period.

(ii) For each 12 month period commencing July 1, 2019 and on July 1 of each year thereafter, the Transfer Price in effect as of the immediately preceding June 30 shall be automatically increased for existing and new purchase orders (regardless of when placed) requesting delivery on or after August 1 of such new 12 month period by the cumulative percentage increase, if any, in the Pharmaceutical Producer Price Index during the twelve months ended May 31 immediately preceding such date. Once the Transfer Price for a twelve month period has been set as aforesaid, it shall not be affected by revisions to the Pharmaceutical Producer Price Index for the 12 month period ended May 31, which was the basis of determination; *provided, however*, that in calculating the adjustment to the Transfer Price for the next subsequent 12 month period commencing on July 1, the Pharmaceutical Producer Price Index as of the beginning of the 12 month period ended May 31 preceding such date, shall be the same figure as was used as the end of the 12 month period for the prior year's calculation regardless of any subsequent revisions made by the Bureau of Labor Statistics thereto.

(iii) At any time the Transfer Price for bottle sizes, other than the [**] ounce and [**] ounce bottles, shall be determined as follows: the sum of (i) the product of (A) the price of the [**] bottle multiplied by (B) a fraction, the numerator of which is 16 minus the number of ounces in the new bottle size and the denominator of which is 15 (the "[**] Bottle Percentage"), plus (ii) the product of (A) the price of the [**] bottle, multiplied by (B) 1 minus the [**] Bottle Percentage. For example, to determine the price of a [**] bottle, the [**] size price would be multiplied by 73.333% and the [**] size price would be multiplied by 26.667%. Accordingly, the resulting Transfer Price for the [**] size would be (73.333%) ([**]) + (26.667%) ([**]) or [**], which price would be increased as provided in Section 6.3(a)(ii), at the same time as Transfer Price of the [**] and [**] bottles are increased.

6.2 Invoicing. Upon notifying AYTU of availability for pick-up of an order of a Product, TRIS shall submit invoices therefor to AYTU. Subject to Section 5.4, AYTU shall pay each invoice in full within thirty (30) days after AYTU receives notice of the availability at TRIS' warehouse of Products covered by the invoice (it being understood that a certificate of analysis certifying that a Product meets its Product Specification will be delivered along with the shipment of such Product as set forth in Section 8.2). Notwithstanding the foregoing, with respect to Product ordered prior to Launch of CCP-08, TRIS will invoice AYTU after such Product is released from TRIS' quality control operations (which Product may be stored at TRIS' facilities, at AYTU's request, and subject to TRIS' prior consent) and such invoice shall be paid by AYTU within thirty (30) days. All invoices not paid within the time period specified above, shall bear interest from the date due until paid at the rate equal to the lesser of (1) 1.5% per month and (2) the maximum interest rate permitted by Applicable Law. For the avoidance of doubt, and notwithstanding anything else to the contrary contained in this Agreement: the foregoing provisions shall be applicable to all Units of Product ordered pursuant to this Agreement, including, without limitation, the validation batches of CCP-08, but only if the Product validation batches are available for commercial sale with at least six months less than the Products' approved shelf life.

6.3 Payment of Royalties.

(a) For each Fiscal Quarter during the Term of this Agreement commencing with the first Fiscal Quarter which includes AYTU's Launch of the Product, AYTU shall calculate the Net Sales from the sale of each Product in the Territory. Each such calculation shall be conducted in a manner consistent with the definition of "Net Sales" contained herein and shall be in accordance with GAAP.

(b) Within forty-five (45) calendar days (sixty (60) days in the case of AYTU's last Fiscal Quarter in a calendar year) after the last day of each Fiscal Quarter of each calendar year during the Term commencing with the Fiscal Quarter of AYTU's Launch of a Product, AYTU shall furnish to TRIS a written report (the "**Quarterly Payment Report**") setting forth for such Fiscal Quarter, (i) the Net Sales of each Product (including the number of units shipped times the invoiced price per unit and the details of all deductions from gross sales to arrive at Net Sales); (ii) the date of AYTU's Launch of such Product during such period (if applicable), (iii) the amount of the Royalty Payment to be made to TRIS, (iv) the applicable royalty rate payable under Section 6.3(e), together with reasonable supporting documentation with respect thereto. AYTU shall also remit to TRIS, by the due date of each Quarterly Payment Report for each Fiscal Quarter, a payment equal to the Royalty Payment for each Product for such Fiscal Quarter (subject to the next paragraph of this Section 6.3(b)). Such Quarterly Payment Reports shall be subject to the audit provisions of Section 6.5. Payment of Royalty Payments for the Products shall not relieve AYTU of the obligation to pay the Transfer Price for such Products.

(c) Within twenty-five (25) calendar days after the last day of each Fiscal Quarter, of each calendar year during the Term, commencing with the Fiscal Quarter of AYTU's Launch of a Product, AYTU shall furnish to TRIS and the Former Owner (at such address as TRIS furnishes to AYTU in writing) a written estimate of the Net Sales for such Product for such Fiscal Quarter, which estimate shall be solely for informational purposes and shall not be binding on AYTU.

(d) AYTU and its permitted licensees and assignees agree to be bound for the benefit of the Former Owner, by the same obligations as TRIS under the Asset Sale Agreement in respect of payment of royalties pursuant to Section 3.2 of the Asset Sale Agreement with respect to the Products. Accordingly, unless and to the extent TRIS instructs otherwise in writing: (i) At the time of payment to TRIS, AYTU will pay to the Former Owner a royalty of [**] of Net Sales of Tuzistra XR on a quarterly basis for the period ending June 13, 2028 and [**] of Net Sales of CCP-08 on a quarterly basis for the period ending ten years from the first commercial sale thereof, and reduce the Royalty Payment otherwise payable to TRIS by such amount provided no portion of the Royalty Make Whole Payment shall be payable to the Former Owner. Such payment will be accompanied by a similar quarterly payment report to that provided to TRIS except that the applicable royalty rate shall be [**] and shall be accompanied by a request for an invoice supporting the payment made; (ii) At least two Business Days prior to sending such report to the Former Owner, AYTU shall provide to TRIS a copy of such report by e-mail, and if TRIS objects shall not send such report or payment to the Former Owner. If TRIS does not object, AYTU shall send such report to the Former Owner along with payment, and a request for invoice (which shall be provided to TRIS when received) and evidence of same to TRIS. TRIS' failure to object shall not be evidence of TRIS' agreement with the calculation of Net Sales.

(e) For each Fiscal Quarter or portion thereof during the Term of a Product, AYTU shall pay TRIS the Royalty Payment (reduced by payments to the Former Owner as provided in Section 6.3(b)). The Applicable Royalty Percentage multiplied by the Net Sales of the Product constitutes the **"Royalty Payment."**

6.4 Royalty Make Whole Payment.

(a) For each Make Whole Payment Commercial Year during the Term of this Agreement (in its entirety), commencing with the second Make Whole Payment Commercial Year and ending with and including the tenth Make Whole Payment Commercial Year, AYTU shall pay TRIS an amount (the **"Royalty Make Whole Payment"**) equal to the product of (x) Applicable Make Whole Payment per Unit for such Make Whole Payment Commercial Year, multiplied by (y) the Minimum Unit Sales Commitment Shortfall for such Make Whole Payment Commercial Year. Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, for purposes of calculating the Minimum Unit Sales Commitment Shortfall for any Make Whole Payment Commercial Year, the Minimum Unit Sales Commitment for such Commercial Year shall be reduced by the number of Ineligible Months, if any, in such Commercial Year, divided by twelve. The term "Ineligible Month" means any calendar month in the applicable Make Whole Payment Commercial Year during which either of the following is true with respect to the Products: (i) sale and distribution of all Products that had received NDA Approval in the Territory ceased during the month due to an injunction or FDA mandate; or (ii) there was a Supply Interruption during such month (i.e. a Supply Interruption began during such month or a Supply Interruption began prior to the commencement of such month and no Supply Resumption Notice was sent prior to the commencement of such month) for all Products that had received NDA Approval. AYTU will submit its notice of the Royalty Make Whole Payment for the Products within sixty (60) days after the end of each Make Whole Payment Commercial Year. Each such notice shall be accompanied by a detailed line item description of the calculation of such Royalty Make Whole Payment. Simultaneous with such notice, AYTU shall remit to TRIS the Royalty Make Whole Payment calculated in such notice.

(b) Notwithstanding the foregoing if there is a Third Party Generic Launch of any Product, then: (i) no Royalty Make Whole Payment shall be payable for any Make Whole Payment Commercial Year after the Make Whole Payment Commercial Year in which the Third Party Generic Launch occurs; and (ii) the Minimum Unit Sales Commitment Shortfall for the Make Whole Payment Commercial Year in which the Third Party Generic Launch occurs, shall be calculated by prorating the Minimum Unit Commitment for such Make Whole Payment Commercial Year based upon the ratio that the total number of days during such Make Whole Payment Commercial Year prior to the Third Party Generic Launch bears to three hundred sixty- five (365).

6.5 TRIS' Audit Rights. AYTU shall maintain and shall require its Subsidiaries and Sublicensees to maintain, at their respective offices, accurate and complete books and records of the Net Sales of each of the Products in such form and in such reasonable detail as to enable the TRIS, Former Owner and the Former Owner's Affiliates and licensees to verify the Net Sales of each of the Products in the Territory and Royalty Payments (and any royalty payments made directly to Former Owner by AYTU). Upon the written request of TRIS, on behalf of the Former Owner as a result of an audit request to TRIS provided by the Former Owner, not more than once per calendar year, and additionally upon the written request of TRIS without the need for a request by the Former Owner, not more than once per calendar year, AYTU shall permit an independent certified public accounting firm and/or suitably qualified pharmaceutical industry expert jointly selected by AYTU and TRIS to have access during normal business hours to such of the records of AYTU as may be reasonably necessary to verify the accuracy of the Net Sales and Royalty Payments (and any royalty payments made directly to Former Owner by AYTU) for each Product for any calendar year ending not more than four (4) full years prior to the date of such request. If such accounting firm and/or pharmaceutical industry expert concludes that there are discrepancies in the reporting or calculation of the Net Sales or the Royalty Payments for a Product, such accounting firm or pharmaceutical industry expert shall recalculate such amounts and: (a) AYTU shall pay any additional sums underpaid to TRIS within thirty (30) calendar days of such re-determination; or (b) TRIS, at its option, shall repay or, credit AYTU for any overpaid amounts. The fees and expenses charged by such accounting firm and/or pharmaceutical industry expert shall be paid by TRIS. However, if the audit discloses that the aggregate Royalty Payments relating to all Products to TRIS was underpaid during the audit period by more than five per cent (5%), then AYTU shall pay the reasonable fees and expenses charged by the accounting firm and/or pharmaceutical industry expert. Each Party shall forthwith pay any amounts discovered to be due by it to the other pursuant to an audit together with interest from the date payment was originally due at a rate equal to the floating annual rate of 2% above the commercial prime rate as published in the Wall Street Journal on the next Business Day following receipt of the auditor's report. The results of such audit shall be final and binding on the Parties. The Former Owner shall have access to the results of such audit.

6.6 Taxes.

(a) AYTU shall be solely responsible for the payment of all federal, state or local taxes, use or value added taxes, excise or similar charges, or other tax assessments (other than that assessed against income), assessed or charged on the sale of the Products to or by AYTU, its Subsidiaries or Sublicensees pursuant to this Agreement.

(b) The royalties payable by AYTU to TRIS or the Former Owner pursuant to this Agreement (" **Payments**") shall not be reduced on account of any taxes unless required by Applicable Law. TRIS and Former Owner shall be responsible for paying any and all taxes (other than withholding taxes required by Applicable Law to be paid by AYTU) levied on account of Payments it receives. AYTU shall deduct or withhold from the Payments only taxes that it is required by Applicable Law to deduct or withhold.

(c) Notwithstanding the foregoing, if TRIS or the Former Owner is entitled under any applicable tax treaty to a reduction of rate of, or the elimination of, applicable withholding tax, it may deliver to AYTU or the appropriate Governmental Authority (with the assistance of AYTU to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve AYTU of its obligation to withhold tax, and AYTU shall apply the reduced rate of withholding, or dispense with withholding, as the case may be, provided that AYTU has received evidence, in a form reasonably satisfactory to AYTU, of TRIS' or the Former Owner's delivery of all applicable forms (and, if necessary, its receipt of appropriate governmental authorization) at least fifteen (15) days prior to the time that the Payments are due (and at TRIS or the Former Owner's request, AYTU will delay payment to allow such reduction and the time for payment shall be extended accordingly). AYTU shall provide TRIS and the Former Owner reasonable assistance, which shall include the provision of such documentation as may be required by the tax authority, in order to allow TRIS or the Former Owner, as the case may be, to obtain the benefit of any present or future treaty against double taxation which may apply to such Payments or to claim an exemption from or obtain a repayment or a reduction of such tax. If, in accordance with the foregoing, AYTU withholds any amount, it shall pay to TRIS or the Former Owner, as the case may be, the balance when due, make timely payment to the proper taxing authority of the withheld amount, and send to such Person proof of such payment within fifteen (15) Business Days following that payment. For purposes of this Agreement, the stated amount of the payments payable by AYTU shall not include any sales tax that TRIS or the Former Owner, as the case may be, may be required to collect from AYTU, and TRIS or the Former Owner, as the case may be, shall be entitled to collect same from AYTU on receipt of a valid tax invoice. Notwithstanding the foregoing, neither AYTU nor TRIS will take any action (including licensing or assigning its rights hereunder) that would create or cause an increase in withholding liability above the withholding required under the treaty applicable to payments between the United States and the United Kingdom. Nothing in this Section 6.6 will require either Party to take any action in the event of a change to Applicable Law after the date of this Agreement.

6.7 Confidential Financial Information. The Parties shall treat all financial information subject to review under Section 6.5 and Section 6.9 hereof as Confidential Information.

6.8 Mode of Payment. All payments payable pursuant to this Agreement shall be made in United States dollars, and in the case of Royalty Payments, and Royalty Make Whole Payments, by wire transfer to TRIS' designated account, unless TRIS requests otherwise in writing. All payments of Transfer Price, Royalty Payments, AG Product Royalty Payments and Royalty Make Whole Payments not paid by their due date (including as ultimately determined pursuant to Section 6.5 and 6.9(d)) shall bear interest commencing on such due date until paid at the rate equal to the lesser of (a) rate equal to the floating annual rate of 2% above the commercial prime rate as published in the Wall Street Journal on the date payment should have been made and (b) the maximum interest rate permitted by Applicable Law.

6.9 Authorized Generic.

(a) At any time on or after a Third Party Generic Launch with respect to a Product, TRIS shall have the right to manufacture and Market an AG Product of such Product. AYTU is not permitted to Market an AG Product of a Product. If TRIS Markets AG Products during the Term of such Product, it shall pay AYTU on a Fiscal Quarterly basis [**] of TRIS' Gross Margin for such AG Product for such Fiscal Quarter (the "**AG Product Royalty Payment**"), and if Gross Margin is negative then AYTU shall pay TRIS [**] of such negative Gross Margin, as more fully set forth in this Section 6.9; *provided, however*, that if Gross Margin is negative for two consecutive Fiscal Quarters, AYTU may terminate this Agreement by written notice to TRIS on thirty (30) days' notice delivered within thirty (30) days following delivery of TRIS' second consecutive AG Quarterly Payment Report showing that AYTU owes amounts to TRIS arising from negative Gross Margin, provided however that if together with such second consecutive AG Quarterly Payment Report, TRIS sends a notice stating that AYTU will no longer be responsible for its share of negative Gross Margin for future quarters, then AYTU may not terminate this Agreement on account of negative Gross Margin.

(b) For each Fiscal Quarter during the Term of this Agreement commencing with the first Fiscal Quarter which includes TRIS' launch of an AG Product TRIS shall calculate the Gross Margin from the sale of each AG Product in the Territory. Each such calculation shall be conducted in a manner consistent with the definition of "Net Sales" (as revised in the definition of Gross Margin) contained herein and shall be in accordance with GAAP.

(c) Within forty-five (45) calendar days (sixty (60) days in the case of the last Fiscal Quarter in a calendar year) after the last day of each Fiscal Quarter of each calendar year during the Term commencing with the Fiscal Quarter of TRIS' launch of an AG Product, TRIS shall furnish to AYTU a written report (the "**AG Quarterly Payment Report**") setting forth for such Fiscal Quarter, (i) the Net Sales of each Product (including the number of units shipped times the invoiced price per unit and the details of all deductions from gross sales to arrive at Net Sales, with Net Sales determined as in the definition of Gross Margin); (ii) the date of TRIS' launch of such Product during such period (if applicable), (iii) the amount of the AG Product Royalty Payment to be made to AYTU, together with reasonable supporting documentation with respect thereto. TRIS shall also remit to AYTU, by the due date of each AG Quarterly Payment Report for each Fiscal Quarter, a payment equal to the AG Product Royalty Payment for the AG Product for such Fiscal Quarter. Such AG Quarterly Payment Reports shall be subject to the audit provisions of Section 6.9(d). Notwithstanding the foregoing, if the AG Quarterly Payment Report shows that the Gross Margin is negative then AYTU shall pay TRIS [**] of such negative Gross Margin, within thirty (30) days of receipt of the AG Quarterly Payment Report.

(d) TRIS shall maintain and shall require its Subsidiaries and sublicensees to maintain, at their respective offices, accurate and complete books and records of the Net Sales of each of the AG Products in such form and in such reasonable detail as to enable AYTU, to verify the Net Sales of each of the AG Products in the Territory and the AG Product Royalty Payments. Upon the written request of AYTU not more than once per calendar year, TRIS shall permit an independent certified public accounting firm and/or suitably qualified pharmaceutical industry expert jointly selected by TRIS and AYTU to have access during normal business hours to such of the records of TRIS as may be reasonably necessary to verify the accuracy of the Net Sales and AG Product Royalty Payments for each AG Product for any calendar year ending not more than four (4) full years prior to the date of such request. If such accounting firm and/or pharmaceutical industry expert concludes that there are discrepancies in the reporting or calculation of the Net Sales or the AG Product Royalty Payments for an AG Product, such accounting firm or pharmaceutical industry expert shall recalculate such amounts and: (a) TRIS shall pay any additional sums overpaid by AYTU or underpaid to AYTU, as the case may be, within thirty (30) calendar days of such re-determination; or (b) AYTU shall repay TRIS for any overpaid amounts by TRIS or underpaid amounts by AYTU. The fees and expenses charged by such accounting firm and/or pharmaceutical industry expert shall be paid by AYTU. However, if the audit discloses that the aggregate AG Product Royalty Payments relating to all AG Products to AYTU was underpaid during the applicable audit period by more than five per cent (5%), then TRIS shall pay the reasonable fees and expenses charged by the accounting firm and/or pharmaceutical industry expert. Each Party shall forthwith pay any amounts discovered to be due by it to the other pursuant to an audit together with interest from the date payment was originally due at a rate equal to the floating annual rate of 2% above the commercial prime rate as published in the Wall Street Journal on the next Business Day following receipt of the auditor's report.

ARTICLE VII –INFRINGEMENT

7.1 Infringement Actions by Third Parties.

(a) If TRIS, AYTU or their Affiliates, shall be sued or threatened with suit during the Term or with respect to actions during the Term by a Third Party for infringement of any patent of a Third Party or for misappropriation of any Third Party know-how, trade secret, proprietary, technical or confidential or the development, manufacture and commercialization of a Product (which for purposes of this Section 7 includes an AG Product) in the Territory (other than infringement or misappropriation of any copyright or trademark arising out of the marketing and/or sale of a Product in the Territory during the Term) (each, an **"Infringement Action"**), such Party shall promptly notify the other Party in writing (whether such action was brought against AYTU or TRIS). During the Term and thereafter with respect to events arising during the Term, TRIS shall have the right, but not the obligation, to undertake control of and manage and defend such Infringement Action, including, without limitation, selection of counsel, and settling such Infringement Action subject to AYTU's consent as set forth below. AYTU shall, promptly upon TRIS's request, provide reasonable assistance in conducting the litigation. TRIS shall have the right to settle the Infringement Action only with the consent of AYTU, not to be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, AYTU shall not have the right to settle such action.

(b) The Parties shall share equally the ongoing costs and expenses (including attorney's fees) of any Infringement Action. AYTU shall reimburse TRIS for AYTU's share of such costs and expenses, within thirty (30) days after the date of TRIS' invoice for same.

(c) Each of TRIS and AYTU shall share equally and be responsible for any settlement payment, damages award and/or judgment, including any Losses, in connection with any Infringement Action (an "**Infringement Action Award**"). Each Party will indemnify and hold harmless the other Party and its Affiliates from its payment obligations pursuant to this Section 7.1(c). Any and all amounts recovered with respect to such an action shall be applied first to reimburse the Parties for their reasonable and documented out-of-pocket expenses (including reasonable attorney's fees) in prosecuting such action and the remainder shall be shared equally.

(d) This Article VII shall cover the procedure and remedy for indemnification for Infringement Actions by Third Parties, to the exclusion of Article XIII; *provided, however*, that the foregoing shall not limit a Party's right to recover for a breach of any representation or warranty.

7.2 Infringement Actions by TRIS or AYTU. In the event that any Party becomes aware during the Term of any Person infringing or potentially infringing the Product Technology, whether by direct or indirect infringement, or by misappropriation of Product Technology, or that a Person has filed a certification under 21 USC 355(b)(2)(A)(iv) or Section 355(j)(2)(A)(vii)(IV) (or successor provisions) of the Hatch-Waxman Act relating to a Product (a "**Hatch-Waxman Certification**"), it shall promptly notify the other Party and in the case of a Hatch Waxman Notification shall provide a copy to the other Party within two Business Days of receipt thereof. TRIS in its sole discretion shall determine whether an action should be commenced relating to such infringement, potential infringement or certification, TRIS shall control and manage any such action (including without limitation, control over the settlement of such action, subject to AYTU's consent for such settlement as provided below), and AYTU shall cooperate with TRIS and join the action as reasonably requested. Each Party shall be responsible for fifty percent (50%) of the ongoing costs and expenses (including attorney's fees) and any damages, settlements, or judgments related to any such action. AYTU shall reimburse TRIS for AYTU's share of such costs and expenses within thirty (30) days after the date of TRIS' invoice for same. Any and all amounts recovered with respect to such an action shall be applied first to reimburse the Parties for their reasonable and documented out-of-pocket expenses (including reasonable attorney's fees) in prosecuting such infringement or misappropriation and the remainder shall be shared equally. TRIS shall have the right to settle such action only with the consent of AYTU, not to be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, AYTU shall not have the right to settle such action.

7.3 License Fees to Third Parties. In the event that either AYTU or TRIS during the Term learns of any Third Party patents which may cover the manufacturing, marketing, testing or packaging of the Product in the Territory, such Party will promptly notify the other Party. The Parties agree to confer in good faith regarding such potential infringement risk and to explore reasonable alternatives for avoiding such risk and to provide such information to each other as either Party may reasonably request. If the risk of such infringement can be avoided or substantially reduced by the taking of a Third Party license then the Parties shall use Commercially Reasonable Efforts to obtain such Third Party license, provided that the consent of both Parties, not to be unreasonably withheld, conditioned or delayed shall be required to obtain such license and shall share the costs and expenses, licensing fees and royalties during the Term payable for and under such license in accordance with the Parties' Expense Allocation.

7.4 Trademarks.

(a) **General.** AYTU will Market the Products in the Territory, subject to Section 4.10 and Section 7.4(c)(i), under the AYTU Marks and the TRIS Trademarks.

(b) **Trademark Filing and Expenses .** AYTU shall be solely responsible for the filing, prosecution and maintenance of the AYTU Marks in the Territory and all costs and expenses related thereto, and TRIS shall be solely responsible for the filing, prosecution and maintenance of the TRIS Marks in the Territory and all costs and expenses related thereto.

(c) **Trademark Infringement.**

(i) With respect to any and all claims instituted by Third Parties against TRIS or AYTU or any of their respective Affiliates for Trademark infringement involving the Marketing of the Product TRIS shall be solely responsible for, and indemnify AYTU against, any and all Losses arising out of or resulting from the use of the TRIS Marks and AYTU shall be solely responsible for, and indemnify TRIS and its Affiliates against, any and all Losses arising out of or resulting from the use of any other Trademark. If any claim is made against AYTU in connection with the use of the TRIS Marks, AYTU may cease using the TRIS Marks until such claim is favorably resolved.

(ii) In the event that a Party becomes aware of actual or threatened infringement of a Trademark used in connection with the Product, that Party shall promptly notify the other Party in writing. AYTU shall have the right but not the obligation to bring an action with respect to such infringement against any Third Party for infringement of an AYTU Mark. TRIS shall have the right, but not the obligation to bring an action with respect to such infringement against any Third Party for infringement of a TRIS Mark. AYTU, in the case of AYTU Marks and TRIS in the case of TRIS Marks, shall bear all reasonable and documented out-of-pocket costs and expenses of the action (including court costs, reasonable fees of attorneys, accountants and other experts and other expenses of litigation or proceedings) and shall be entitled to any recovery in such infringement action.

ARTICLE VIII

MANUFACTURING STANDARDS AND QUALITY ASSURANCE

8.1 TRIS Product Warranties . TRIS hereby represents, warrants, covenants and agrees that:

(a) All Products supplied to AYTU by TRIS under this Agreement will meet the Product Specifications as of the date that title to such Product is delivered to AYTU and TRIS shall continue to use Commercially Reasonable Efforts to rectify any deficiencies identified in the FDA Letter.

(b) All Products supplied by TRIS hereunder will be transferred to AYTU free and clear of any liens, claims, encumbrances and security interests.

8.2 Product Testing. TRIS shall conduct, or cause to be conducted, all physical parameters and in-process testing with respect to each batch of a Product to be supplied pursuant hereto prior to delivery thereof to AYTU. Prior to release to AYTU, TRIS shall perform quality control testing at its own expense on representative samples of each batch of Product to determine/verify it meets Product Specifications. TRIS will provide AYTU with each shipment of Product, a Certificate of Analysis certifying the Product has met Product Specifications. TRIS shall retain a sample of each batch tested for at least the shelf life of such batch, or such longer period as may be required by cGMP.

8.3 Quality Agreement. Prior to the Launch Date of the first Product to be Launched, the Parties will negotiate in good faith and enter into a separate quality agreement between the Parties with respect to Products (such agreement, as amended by the Parties from time to time, a “**Quality Agreement**”). The Quality Agreement shall include terms and conditions as are reasonably customary for agreements of that type taking into account each Party’s obligations under this Agreement and the requirements of Applicable Law. If there is any conflict, inconsistency or ambiguity between the provisions of the Quality Agreement and the provisions of this Agreement, then the provisions of this Agreement will govern.

8.4 Disclaimer. TRIS HEREBY DISCLAIMS ALL WARRANTIES NOT EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY.

ARTICLE IX

TERM AND TERMINATION

9.1 Term.

This Agreement shall come into effect on the Effective Date and, unless it is earlier terminated pursuant to other provisions of this Article 9, shall expire:

- (i) as to each Product upon the expiry of the Royalty Term of such Product; and
- (ii) in its entirety upon the expiration of this Agreement with respect to the last Product Royalty Term to expire.

“**Term**” with respect to a Product shall mean the period from the Effective Date until the earlier of (a) the expiration of the Royalty Term for such Product or (b) termination of this Agreement with respect to such Product or in its entirety.

9.2 Termination.

This Agreement may be terminated

(l) in its entirety:

- (a) immediately upon the mutual written consent of AYTU and TRIS;

(b) by the other Party upon a Party's material breach of its obligations under this Agreement, which material breach, remains uncured for ninety (90) calendar days, after the terminating Party has provided written notice of same; provided that if a Party shall have breached any payment obligation under this Agreement and such breach shall have continued for thirty (30) days after written notice thereof was provided to such Party by the other Party, then this Agreement shall terminate at the expiration of such thirty (30) day period; provided that if a Party disputes a payment obligation during such thirty (30) day period (by written notice delivered to the other Party within such period) then this Agreement will not terminate until the matter is decided against it in accordance with Section 14.3, at which time it shall immediately terminate, and further provided that a Party may make a disputed payment and reserve its rights with respect thereto;

(c) in the event either Party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any case or proceeding under the Bankruptcy Code or any other statute of any state or country relating to insolvency or the protection of creditor rights, or otherwise rejects this Agreement in any case or proceeding under the Bankruptcy Code, the other Party shall have a right to terminate this Agreement, provided that in the case of an involuntary bankruptcy proceeding such right to terminate shall only become effective if the other Party consents thereto or such proceeding is not dismissed within sixty (60) calendar days after the filing thereof. The Parties agree that each party may fully exercise all of its rights and elections under the Bankruptcy Code;

(d) by TRIS upon written notice to AYTU if AYTU or its Subsidiaries directly, or indirectly by controlling, providing assistance or direction to a Third Party, (i) file an action seeking to invalidate or challenge the validity or enforceability of, (ii) oppose any extension of, or (iii) commence any interference or opposition proceeding with respect to, any Patent included in TRIS Intellectual Property Rights ("**TRIS Patent Rights**") and listed in the FDA Orange Book with respect to the Products (each such action, a "**AYTU Patent Challenge**"). AYTU will include provisions in any agreement entered into with a Sublicensee providing that if the Sublicensee or its Affiliates undertake or threaten an AYTU Patent Challenge with respect to any TRIS Patent Rights under which the Sublicensee is granted the right to Market a Product, AYTU will be permitted to terminate such sub-licensed rights. If such a Sublicensee of AYTU (or an Affiliate of such Sublicensee) undertakes an AYTU Patent Challenge of any such TRIS Patent Right relating to a Product, then AYTU upon receipt of notice from TRIS of such AYTU Patent Challenge will terminate the applicable sublicense agreement. In connection with such sublicense termination, AYTU shall cooperate with TRIS' reasonable requests to cause such a terminated Sublicensee to discontinue activities with respect to such Product;

(e) by TRIS, upon thirty (30) calendar days prior written notice to AYTU, at any time after twenty-four (24) months following a Third Party Generic Launch, in the event that for any full calendar year commencing after such twenty-four month period, the sum of (i) TRIS' Royalty Payments and (ii) TRIS' share of Gross Margin from the sale of AG Products is less than [**].

(II) with respect to a Product:

- (a) by either Party immediately upon written notice to the other Party if a permanent injunction is issued preventing the sale of such Product in the Territory; and
- (b) by AYTU, as provided in Section 5.7(e).

9.3 Effect of Termination or Expiration

Following the expiration of the Term with respect to a Product in the Territory pursuant to Section 9.1(i), each Party shall have a non-exclusive, royalty-free, perpetual, irrevocable and sublicensable right and license to Market, sell, have sold, distribute and otherwise exploit such Product in the Territory. For the avoidance of doubt, nothing in this Section 9.3 shall obligate either Party to transfer any technology to enable the other Party to exercise any such right or license.

(a) Upon termination of this Agreement in its entirety or with respect to a Product:

(i) TRIS' obligations to manufacture and supply the terminated Products to AYTU pursuant to this Agreement shall terminate;

(ii) Subject to Section 9.3(e), AYTU shall no longer have the right to Market, distribute or sell the terminated Products in the Territory and all licenses and rights granted to AYTU by TRIS pursuant to under this Agreement shall terminate; (iii) to the extent requested by TRIS, AYTU shall promptly transfer and convey to TRIS, at AYTU's expense, ownership of all Regulatory Documentation Controlled by AYTU or its Affiliates at the date of such termination for terminated Products in the Territory, including the Product NDAs and provide TRIS with reasonable assistance in connection with such transfer and assumption of responsibility for any Regulatory Documentation or Regulatory Approvals in AYTU's name for terminated Products;

(iv) TRIS may repurchase all or a portion of the terminated Products in AYTU's inventory at the Transfer Price plus AYTU's reasonable documented out-of-pocket costs associated with shipping and handling;

(v) Upon TRIS' written request, AYTU shall take delivery and pay for terminated Product previously ordered or subject to the binding portion of the Forecast (the "**Take and Pay Event**");

(vi) AYTU shall no longer have the right to market, distribute or sell the terminated Product in the Territory; provided, that, if the Take and Pay Event occurs, AYTU may sell Product in its possession or so purchased pursuant to the Take and Pay Event, provided, further, that AYTU makes Royalty Payments to TRIS on such sales in accordance with Section 6.3;

(vii) subject to Section 9.3(d), AYTU shall promptly transfer to TRIS, at AYTU's expense, all data, reports, records and materials that relate to the terminated Product;

(viii) subject to Section 9.3(d), each Party shall promptly return to the other Party all records and materials in the Party's possession or control containing Confidential Information of the other Party relating to the terminated Product;

(ix) To the extent AYTU owns or holds any right, title or interest in any AYTU Product Trademarks or any internet domain registrations for any AYTU Product Trademarks, under or pursuant to which the terminated Product has been or is being Marketed and under which no non-terminated Product is Marketed, AYTU shall promptly assign and convey ownership of the same to TRIS, free of cost, expense or other payment other than AYTU's reasonable documented out-of-pocket costs associated with the assignment and/or conveyance, which shall be reimbursed by TRIS;

(x) AYTU shall promptly provide to TRIS copies of all contracts entered into by AYTU or its Subsidiaries that are related to the Product and are not multi-product contracts and shall assist TRIS in understanding the nature of any multi product contracts that cover the terminated Product, and at TRIS' request, to the extent requested by TRIS, AYTU shall, and shall cause its Subsidiaries to, promptly assign (without relieving AYTU of any pre-assignment liability under such other agreement and without TRIS assuming any pre-assignment liabilities of AYTU under such other agreement) to TRIS to the extent it (or its Subsidiaries) may legally and contractually do so, any other contracts that are solely related to the terminated Product (collectively, such contracts that are solely related to the terminated Product, the "Product Contracts") and AYTU shall and shall cause its Subsidiaries to assist TRIS in the transition of such agreements and arrangements upon TRIS' reasonable request and at no charge to TRIS (except for reimbursement of reasonable and documented out-of-pocket expenses incurred in rendering such assistance); and

(xi) all of TRIS' obligations to AYTU under this Agreement (including, without limitation, under Section 3.3) shall terminate.

(b) If this Agreement is terminated by a Party as a result of the other Party's breach pursuant to Section 9.2(l)(b) or as a result of an event described in Section 9.2(l)(c) occurring with respect to the other Party or by TRIS pursuant to Section 9.2(l)(d), then, in addition to the remedies provided herein, the terminating Party shall have such other remedies available to it in law and in equity.

(c) Termination of this Agreement with respect to a Product or in its entirety by either Party for any reason will not release the other from any obligation to pay any royalties or make any payments described in this Agreement which were accrued prior to the effective date of termination.

(d) Within thirty (30) days of the effective date of any termination of this Agreement, each Party shall cooperate with the other Party in transferring to such other Party or destroying (as the other Party may elect), and causing its Subsidiaries to transfer or destroy (as applicable), all Confidential Information to which a Party does not retain rights hereunder, except that the Party with an obligation to return or destroy such Confidential Information may retain one copy of any data, reports, records, files and materials and other Confidential Information for the purpose of performing any obligations under this Agreement that may survive such termination or for archival purposes, or for exercising its rights under Section 9.3(e)

(e) Notwithstanding the termination of AYTU's licenses and other rights under this Agreement, except if this Agreement is terminated pursuant to Section 9.2(II)(a), AYTU and its Subsidiaries shall have the right for one (1) year after the effective date of such termination to sell or otherwise dispose of all Product then in its inventory, as though this Agreement had not terminated, including, without limitation, paying the Royalty Payments to TRIS on such sales and any amount that becomes payable pursuant to Section 3.6 as a result of such sales.

(f) The provisions of this Section 9.3 are not intended to be exclusive and are without prejudice to the rights of the Parties to seek any other rights and remedies that they may have under this Agreement, at law or in equity or otherwise.

9.4 Survival.

(a) Upon termination or expiration, this Agreement shall forthwith become void and of no further force or effect, except for the following provisions, which shall remain in full force and effect: Sections 2.1(d), 2.1(e), 2.3, 4.10(b), 5.5, Article VI (with respect to sales and purchases of Product during the Term (or, if applicable, pursuant to Section 9.3(e) or 9.3(a)(v) or (vi))), Article VII, Article VIII, Section 9.3; this Section 9.4; Article X, Article XIII, Article XIV and any other provision of this Agreement that by its terms, or the context thereof, is intended to survive such expiration or termination. The rights and remedies provided in this Article IX shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) Any termination or expiration of this Agreement shall not affect any right or claim hereunder that arises prior to such termination or expiration, which claims and rights shall survive any such termination, including, without limitation, any claim for indemnification under Article XIII or any claims for payments of Transfer Price, Royalty Payments or milestone payments.

ARTICLE X – CONFIDENTIALITY

10.1 Confidentiality and Non-Use Obligations.

(a) In carrying out its obligations under this Agreement, each Party will be sharing confidential and proprietary data and information ("Confidential Information") with the other Party. Except as expressly permitted by this Agreement, each Party shall, and shall cause its Subsidiaries to, treat Confidential Information received or deemed to be received from the other Party (the "Disclosing Party") or its Subsidiaries as it treats its own proprietary information of like nature and importance. During the Term and for a period of five (5) years thereafter (indefinitely with respect to trade secrets), the Party in receipt of the Disclosing Party's Confidential Information (the "Receiving Party") shall not disclose, divulge or otherwise communicate such Confidential Information to any Person, or use it for any purpose except pursuant to and in order to carry out its obligations and exercise its rights under this Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's directors, officers, employees, Subsidiaries, consultants, subcontractors, sublicensees or agents and in TRIS' case to its Affiliates to the extent reasonably necessary to carry out its obligations and exercise its right under this Agreement, provided that such directors, officers, employees, Subsidiaries, consultants, subcontractors, sublicensees or agents or in TRIS' case its Affiliates have been advised of the confidential nature of such information and have agreed to maintain such information as confidential to the same extent required by this Article 10.

(b) Confidential Information shall not include information that the Receiving Party can demonstrate:

(i) was known by the Receiving Party or its Subsidiaries prior to the date it was disclosed to the Receiving Party or its Subsidiaries by the Disclosing Party or its Subsidiaries, as evidenced by the prior written records of the Receiving Party or its Subsidiaries;

(ii) is lawfully disclosed to the Receiving Party or its Subsidiaries by a Third Party rightfully in possession of such information and not subject to obligations of confidentiality with respect thereto, either before or after the date of the disclosure to the Receiving Party or its Subsidiaries;

(iii) becomes generally known to the public through no act or omission on the part of the Receiving Party or its Subsidiaries or sublicensees, either before or after the date of the disclosure to the Receiving Party or its Subsidiaries; or

(iv) is independently developed by the Receiving Party or its Subsidiaries without reference to or reliance upon any Confidential Information of the Disclosing Party or its Subsidiaries as established by probative documentary evidence.

(c) The restrictions set forth in this Article X shall not prevent either Party from disclosing Confidential Information (i) in connection with preparing, filing, prosecuting or maintaining the TRIS Patent Rights, (ii) to Governmental Authorities to the extent required or desirable to obtain a Regulatory Approval, (iii) to the Former Owner, as contemplated to comply with the obligations expressly referred to in this Agreement (and in the case of TRIS, as otherwise required by the Asset Sale Agreement), (iv) to potential private investors and lenders and potential lenders (in each case, under a customary confidentiality agreement) in connection with fundraising activities or compliance with existing obligations, (v) to underwriters and financial advisors (under an obligation of confidentiality) in connection with the public offering of securities, (vi) to actual or prospective licensees, sublicensees, distributors and subcontractors (under a confidentiality agreement at least as restrictive as the provisions of this Article 10, provided that the term of confidentiality shall be no less than five (5) years from the date of disclosure), or (vii) that is reasonably determined is required to be disclosed by the Receiving Party (to comply with applicable securities or other laws) to public investors or governmental agencies in connection with the public offering of securities, or (viii) in response to a valid order of a court of competent jurisdiction or other supra-national, federal, national, regional, state, provincial and local governmental or regulatory body of competent jurisdiction or, if in the reasonable opinion of the Receiving Party's legal counsel, such disclosure is otherwise required by law; provided that in all of the above cases (i) to (viii), the Party disclosing Confidential Information of the Disclosing Party shall use all reasonable efforts to provide prior written notice of such disclosure to the Disclosing Party and to take reasonable and lawful actions to avoid or limit such disclosure or to assist the Disclosing Party in avoiding or limiting such disclosure.

(d) Further, either Party may also disclose the existence and terms of this Agreement to its attorneys and advisors, to potential acquirors in connection with a potential sale of such Party's business operations and to existing and potential investors or lenders of such Party, as a part of their due diligence investigations, or to potential permitted assignees or sublicensees, in each case under an agreement to keep the terms of this Agreement confidential under terms of confidentiality and non-use substantially similar to the terms contained in this Agreement.

(e) Specific aspects or details of Confidential Information shall not be deemed to be within the public domain or in the possession of the Receiving Party merely because the Confidential Information is embraced by more general information in the public domain or in the possession of the Receiving Party. Further, any combination of Confidential Information shall not be considered in the public domain or in the possession of the Receiving Party merely because individual elements of such Confidential Information are in the public domain or in the possession of the Receiving Party unless the combination and its principles are in the public domain or in the possession of the Receiving Party.

(f) Notwithstanding anything contained herein to the contrary, that certain Confidentiality Agreement, dated as of October 8, 2018, by and between the Parties shall remain in full force and effect for any breaches of same prior to the date hereof and information disclosed thereunder shall also be deemed disclosed hereunder and following the Effective Date this Agreement shall control with respect to such information.

10.2 Press Releases and Public Announcements. Neither Party shall issue any other news release or make any other public announcement, written or oral, relating to this Agreement, including its terms, or any Products without the prior approval of the other Party, except solely to the extent a Party is advised by its legal counsel that the same is required by law (in which case the disclosing party shall provide the other Party with such reasonable advance notice and opportunity to comment thereon as it reasonably can) or as otherwise permitted pursuant to Section 10.1(c); *provided, however*, the contents of any such announcement or similar publicity that has been previously reviewed and approved by the reviewing Party can be re-released by either Party without a requirement for re-approval. Each Party shall limit public disclosure of the financial terms set forth in this Agreement to the minimum extent required by law (by, for example, requesting confidential treatment of such terms in documents required to be filed with the U.S. Securities and Exchange Commission); *provided, however*, the Parties may, after any required public disclosure for compliance with any Applicable Law, including securities laws, reference such financial terms in news releases or oral statements without seeking approval from the other Party.

The Parties acknowledge that either or both Parties may be obligated to file under Applicable Laws a copy of this Agreement with the U.S. Securities and Exchange Commission or other Governmental Authorities. Each Party shall be entitled to make such a required filing, provided that it requests confidential treatment of the commercial terms and sensitive technical terms hereof to the extent such confidential treatment is reasonably available to such Party. In the event of any such filing, each Party will provide the other Party with a copy of this Agreement marked to show provisions for which such Party intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's reasonable comments thereon to the extent consistent with the legal requirements, with respect to the filing Party, governing disclosure of material agreements and material information that must be publicly filed.

ARTICLE XI – REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Legal and Governmental Compliance. Each Party shall comply with all Applicable Laws, relating to the activities undertaken by such Party hereunder.

11.2 TRIS Representations, Warranties and Covenants. TRIS represents, warrants and covenants to AYTU that the following are true and correct as of the date stated therein, or if none is specified then as of the date hereof:

(a) TRIS is a corporation duly organized, validly existing, and in good standing under the applicable laws of incorporation and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all states and nations in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) TRIS has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of TRIS. This Agreement has been duly and validly executed by TRIS and is the valid and binding obligation of TRIS, enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's right and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions herein contemplated will not violate any order, judgment or decree binding on TRIS, or result in a breach of any term of the certificate of incorporation or by-laws of TRIS or any contract, agreement or other instrument to which TRIS is a party or, to TRIS' knowledge, violate any law, rule or regulation applicable to TRIS, except in each case to an extent not material to TRIS' compliance with its obligations under this Agreement.

(d) There are no judicial, arbitrable, regulatory or administrative proceedings or investigations, claims, actions or suits settled or pending against or, to TRIS' Knowledge, threatened against TRIS or its Affiliates in any court or by or before any Governmental Authority (including in the form of any offer to obtain a license as a result of the offering Person believing such license was required by TRIS not to infringe the intellectual property rights of such offering Person), which would adversely affect TRIS' compliance with its obligations under this Agreement.

(e) TRIS follows, and will continue to follow during the Term (and after the Term to the extent necessary to implement the provisions of Article X), reasonable commercial practices common in the pharmaceutical industry to protect its proprietary and confidential information, including requiring its employees, consultants and agents to be bound in writing by obligations of confidentiality and non-disclosure, and requiring its employees, consultants and agents to assign to it any and all inventions and discoveries discovered by such employees, consultants and/or agents made within the scope of and during their employment, and only disclosing proprietary and confidential information to Persons who are not Subsidiaries pursuant to written confidentiality and non-disclosure agreements.

(f) TRIS is not listed by a United States Governmental Authority as debarred, suspended, proposed for debarment or otherwise ineligible for federal programs in the United States. To TRIS' Knowledge, it has not and will not use the services of any persons debarred under 21 U.S.C. § 335(a) or (b) in any capacity associated with or related to the manufacture of the Products. TRIS also warrants that neither TRIS nor, to its Knowledge, any of its officers or employees has been convicted of a felony under the U.S. federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product, new drug application or abbreviated new drug application and neither TRIS nor to its Knowledge, any of its officers or employees has been convicted of a felony under the U.S. federal law for conduct relating to the regulation of any product under the FD&C Act.

(g) Except as otherwise provided in this Agreement, TRIS shall use Commercially Reasonable Efforts to obtain and maintain all necessary licenses, permits and approvals required by the FDA and other Governmental Authorities in the United States in connection the manufacture of the Products. TRIS shall promptly notify AYTU of any adverse regulatory action related to the Product of which it becomes aware. TRIS has provided AYTU with a complete and correct copy of the FDA Letter through the following link:

<https://www.fda.gov/iceci/enforcementactions/warningletters/ucm603613.htm>

(h) To TRIS' Knowledge: (i) TRIS' Product Technology does not infringe any valid U.S. patent granted as of the Effective Date; (ii) neither TRIS nor any of its employees has violated or misappropriated any trade secret of a Third Party relating to or in respect of the Product; and (iii) TRIS has not committed inequitable conduct before the United States Patent and Trademark Office, which would adversely affect the validity, enforceability, term or scope of any TRIS Patent Rights Covering the Products listed in the Orange Book.

(i) TRIS is the sole and exclusive legal and beneficial owner of the NDA for Tuzistra XR and has the right to transfer all right, title and interest thereto to AYTU free and clear of any liens imposed by TRIS; TRIS has the unconditional and irrevocable right, power and authority to grant to AYTU the rights granted hereunder; neither TRIS' grant of the license and other rights to AYTU, nor its performance of any of its obligations, conflicts with or violates any Applicable Law, or requires the consent, approval or authorization of any governmental or regulatory authority or other Third Party; and TRIS has not brought or threatened any claim (still outstanding) against any Third Party alleging infringement of any TRIS Patent Rights listed in the Orange Book for Tuzistra XR, nor, to its Knowledge, is any Third Party infringing or, to its Knowledge, preparing or threatening to infringe, or practicing any claim of any Patent application, included in the TRIS Patent Rights listed in the Orange Book for Tuzistra XR.

(j) TRIS is acquiring the Shares for its own account, not as a nominee or agent, and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act, in any manner that would be in violation of the Securities Act and with no present intention of distributing or reselling, or granting any participation in, any part thereof. TRIS has not, directly or indirectly, offered the Shares to anyone or solicited any offer to buy any Shares from anyone, so as to bring the offer and sale of any Shares within the registration requirements of the Securities Act and does not have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to the Shares (except it must pledge such Shares to its lender). TRIS will not sell, convey, transfer or offer for sale any of the Shares it acquires except in compliance with the Securities Act and any applicable state securities or "blue sky" laws or pursuant to any exemption therefrom. TRIS understands that the Shares will not be registered under the Securities Act or any state securities laws by reason of their issuance by AYTU in a transaction exempt from the registration requirements thereof and as such are "restricted securities" and (b) the Shares may not be sold or otherwise disposed of unless such sale or disposition is registered under the Securities Act and applicable state securities laws or such sale or other disposition is exempt from registration thereunder. TRIS further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and on requirements relating to AYTU as specified under Rule 144 promulgated under the Securities Act which are outside of TRIS' control.

(k) TRIS is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. TRIS has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Shares and is capable of bearing the economic risks of such investment for an indefinite period of time.

(l) Attached hereto as Schedule 11.2(l) is an extract of a royalty report delivered to TRIS by the Former Owner to TRIS showing the deductions from gross sales in calculating net sales under a "Net Sales" definition which contains the same deductions for Net Sales as used in this Agreement.

(m) TRIS has provided AYTU a true and correct copy of the Asset Sale Agreement, which has not been amended since the date of delivery.

Except as set forth in Section 8.1 and this Section 11.2, but without limiting its obligations under this Agreement, TRIS expressly disclaims all representations and warranties relating to the Products.

11.3 Representations, Warranties and Covenants of AYTU.

AYTU represents, warrants and covenants to TRIS that the following are true and correct as of the date stated therein, or if none is specified then as of the date hereof:

(a) AYTU is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all states in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) AYTU has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of AYTU. This Agreement has been duly and validly executed by AYTU and is the valid and binding obligation of AYTU enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions therein contemplated will not violate any law, rule, regulation, order, judgment or decree binding on AYTU or result in a breach of any term of the certificate of incorporation or by-laws of AYTU or any contract, agreement or other instrument to which AYTU is a party, or, to AYTU's knowledge, violate any law, rule or regulations applicable to AYTU, except in each case to an extent not material.

(d) AYTU follows and will continue to follow during the Term (and after the Term to the extent necessary to implement the provisions of Article X), reasonable commercial practices common in the industry to protect its proprietary and confidential information, including requiring its employees, consultants and agents to be bound in writing by obligations of confidentiality and nondisclosure, and requiring its employees, consultants and agents to assign to it any and all inventions and discoveries discovered by such employees, consultants and/or agents made within the scope of and during their employment, and only disclosing proprietary and confidential information to Persons who are not Subsidiaries pursuant to written confidentiality and nondisclosure agreements.

(e) Without limiting anything herein, AYTU shall materially comply with all Applicable Laws in performing this Agreement, including all Marketing, promotional or advertising activities conducted by it or its Subsidiaries.

(f) AYTU is not listed by a United States Governmental Authority as debarred, suspended, proposed for debarment or otherwise ineligible for federal programs in the United States. To AYTU's Knowledge, it has not and will not use the services of any persons debarred under 21 U.S.C. § 335(a) or (b) in any capacity associated with or related to the manufacture of the Products. AYTU also warrants that neither AYTU nor, to its Knowledge, any of its officers or employees has been convicted of a felony under the U.S. federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product, new drug application or abbreviated new drug application and neither AYTU nor to its Knowledge, any of its officers or employees has been convicted of a felony under the U.S. federal law for conduct relating to the regulation of any product under the FD&C Act.

(g) There are no judicial, arbitral, regulatory or administrative proceedings or investigations, claims, actions or suits pending against or, to AYTU's knowledge, threatened against AYTU or its Subsidiaries in any court or by or before any Governmental Authority, which would adversely affect AYTU's compliance with its obligations under this Agreement.

(h) AYTU shall be responsible for storing Products under appropriate conditions as specified in Labeling and for distribution in full compliance with the applicable cGMP standards, the Regulatory Approvals, the FD&C Act and Applicable Law. AYTU shall have received and shall be in current compliance with all approvals of any Governmental Authority as may be required to Market a Product pursuant to this Agreement.

(i) AYTU shall register and sell the Products only using National Drug Codes that reflect AYTU as the distributor.

(j) AYTU shall be responsible for all price reporting for the Products to any and all governmental agencies, as well as any Third Party pricing publications.

(k) AYTU shall be responsible for all rebates, whether required by contract or state or federal law, for the Products.

(l) AYTU shall take all reasonable actions to ensure that all discounts and price reductions offered to its customers and included in the definition of Net Sales fall within the discount safe-harbor to the federal anti-kickback statute, as described in 42 U.S.C. 1320a- 7b(b)(3)(A) and 42 C.F.R. 1001.952(h).

(m) As of the Effective Date AYTU will have, and will have during the Term, sufficient capital reserves and financial resources to make the payments to be made to TRIS, at the time and in the amount provided in this Agreement, and to satisfy its obligations to Market the Products in the Territory as provided herein.

(n) The Shares are duly authorized and, when issued pursuant to this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens imposed by AYTU. The shares of Common Stock issuable upon conversion of the Shares when issued will be validly issued, fully paid and nonassessable, free and clear of all liens imposed by AYTU. AYTU will at all times have reserved from its duly authorized capital stock the number of shares of Common Stock into which the Shares are then convertible. The Shares have not been registered under the Securities Act and are being issued in reliance on an exemption under the Securities Act.

(o) A true and correct copy of the Certificate of Designations for the Series D Preferred Stock has been delivered to TRIS and has not been amended since the date of delivery and such Certificate of Designations has been duly filed with, and accepted for filing by, the Secretary of State of Delaware.

(p) AYTU has filed all reports, schedules, forms, statements and other documents required to be filed by AYTU under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “**SEC Reports**”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of the later of their respective dates or the most recent amendment to a respective SEC Report, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of AYTU included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of AYTU and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(q) All of the written disclosure furnished by or on behalf of AYTU to TRIS regarding the transactions contemplated hereby, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(r) Assuming the accuracy of TRIS’ representations and warranties set forth in Section 11.2(i) and 11.2(j), no registration under the Securities Act is required for the offer and sale of the Shares, by AYTU to TRIS as contemplated hereby.

(s) The Shares will be issued with restrictive legends preventing the resale of the Shares unless the requirements of Rule 144 under the Securities Act have been met, including without limitation the holding periods imposed by Rule 144. To the knowledge of AYTU, no legend on the Shares, or any restrictions imposed by AYTU with respect thereto, will prevent TRIS from pledging such Securities; provided that such pledged securities will continue to bear the restrictive legends under Rule 144. Once the holding periods and other conditions under Rule 144 have been satisfied, AYTU will reasonably cooperate during and after the Term in enabling TRIS to remove the restrictive legends on the Shares and any shares of common stock into which they may be converted.

(t) AYTU has determined that no filing is necessary under the HSR Act because the size of transaction embodied in this Agreement is less than \$84.4 million.

(u) AYTU shall comply with the provisions of Section 6.7 of the Asset Sale Agreement with respect to any payments of accounts receivable of the Former Owner received by AYTU or any of its Affiliates and provide TRIS written notice thereof.

(v) AYTU will comply with the last sentence of Section 7.8 of the Asset Sale Agreement, regarding withdrawal of the Former Owners NDC numbers for the Products, as if it were TRIS.

11.4 Limitation on Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY TO THE OTHER, WHETHER EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND BOTH PARTIES SPECIFICALLY DISCLAIM ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, OR A WARRANTY AS TO THE VALIDITY OF ANY PATENT RIGHTS OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. IN ADDITION, EACH PARTY UNDERSTANDS AND AGREES THAT NEITHER PARTY WARRANTS NOR COMMITS THAT THE CCP-08 PRODUCT WILL RECEIVE APPLICABLE REGULATORY APPROVAL.

ARTICLE XII – RESERVED

ARTICLE XIII - INDEMNIFICATION; INSURANCE

13.1 Indemnification.

(a) **AYTU Indemnification.** AYTU agrees to indemnify and hold forever harmless TRIS and its Affiliates and each of their agents, directors, officers and employees (each such person, a “**TRIS Indemnified Party**”) from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) (“**Losses**”) in connection with any and all suits, investigations, claims or demands of Third Parties (“**Claims**”) to the extent arising from or in connection with (i) the Marketing, use, the offer for sale, sale or distribution of the Product or any Competing Product by AYTU or its Subsidiaries or Sublicensees in the Territory; (ii) infringement or misappropriation of any copyright or Trademark (other than TRIS Marks) arising out of the Marketing of a Product or any Competing Product in the Territory; (iii) the breach or inaccuracy of any representations, warranties or covenants made by AYTU in this Agreement; (iv) a Recall described in Section 5.5(b); and (v) the gross negligence or willful misconduct of AYTU or its Subsidiaries or Sublicensees or any of their agents, directors, officers or employees; *provided, however*, that AYTU shall not be obligated to indemnify any TRIS Indemnified Party pursuant to this Section 13.1(a) for any Losses to the extent TRIS is obligated to indemnify an AYTU Indemnified Party for such Losses pursuant to Section 13.1(b).

(b) **TRIS Indemnification.** TRIS agrees to indemnify and hold forever harmless AYTU and its Affiliates and each of their agents, directors, officers and employees (each such Person, a "AYTU Indemnified Party") from and against any Losses in connection with any and all Third Party Claims to the extent arising from or in connection with: (i) the Marketing, use, the offer for sale, sale or distribution of any Competing Product by TRIS or its Subsidiaries or their subdistributors in the Territory; (ii) the breach or inaccuracy of any representations, warranties or covenants made by TRIS in this Agreement; (iii) TRIS', its Subsidiaries' or an Approved Manufacturer's manufacture and supply of a Product that does not meet Product Specifications or such Product Warranties provided in Section 8.1 at the time of delivery or during the shelf life of such Product; (iv) the gross negligence or willful misconduct of TRIS or its Affiliates or any of their agents, directors, officers or employees; (v) a Recall described in Section 5.5(a); and (vi) the Marketing, use, the offer for sale or distribution of an AG Product by TRIS or its Affiliates or their subdistributors; *provided, however*, that TRIS shall not be obligated to indemnify any AYTU Indemnified Party pursuant to this Section 13.1(b) for any Losses to the extent AYTU is obligated to indemnify a TRIS Indemnified Party for such Losses pursuant to Section 13.1(a).

13.2 Procedure. The indemnities set forth in this Article XIII are subject to the condition that the Party seeking indemnity shall forthwith notify the other Party on being notified or otherwise made aware of a suit, action or claim and that the indemnifying Party defend and control any proceedings, with the other Party being permitted to participate at its own expense (unless there shall be a conflict of interest which would prevent representation by joint counsel, in which event the indemnifying Party shall pay for the other Party's counsel); *provided* that the indemnifying Party may not settle the suit or otherwise consent to any judgment in such suit without the written consent of the indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed). The Parties shall cooperate in the defense of any Third Party claim. The Parties acknowledge and agree that the indemnity provisions of Section 13.1 shall comprise the Parties' sole remedy relating solely to the items for which indemnity is described and provided in Sections 13.1(a) and (b) above.

13.3 Other Product Liability Claims. To the extent either Party incurs any Losses arising from or in connection with any claim based on product liability with respect to the Products to the extent arising from the actions not subject to the indemnity obligation set forth in Sections 13.1(a) and 13.1(b), above ("Product Claim") such Losses shall be shared by the Parties during the Term in accordance with such Party's Expense Allocation, determined at the effective date of such recovery. Neither Party shall enter into any settlement of a Product Claim, without the prior written consent of the other, such consent not to be unreasonably withheld, delayed or conditioned.

13.4 DISCLAIMER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY COVER, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OR EXPENSES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF OPPORTUNITY OR USE OF ANY KIND, SUFFERED BY THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT PROVIDED HOWEVER, (A) THE LIMITATION OF LIABILITY IN THIS SECTION 13.4 SHALL NOT APPLY IN THE CASE OF A PARTY'S OR ITS SUBSIDIARIES' BREACH OF ITS OBLIGATIONS UNDER SECTION 3.3 OR ARTICLE X AND (B) A PARTY WILL BE LIABLE FOR SUCH DAMAGES TO THE EXTENT IT IS OBLIGATED TO INDEMNIFY THE OTHER PARTY (OR ANY OF SUCH OTHER PARTY'S AFFILIATES) UNDER THIS AGREEMENT IN RESPECT OF A THIRD PARTY CLAIM AGAINST SUCH OTHER PARTY (OR ANY OF SUCH OTHER PARTY'S AFFILIATES) THAT INCLUDES SUCH DAMAGES.

13.5 Insurance. During the term of this Agreement and for a period of five (5) years after its expiration or earlier termination, each Party shall obtain, at its sole cost and expense, liability insurance applicable to its performance under this Agreement, which meets the following requirements:

(a) the insurance shall insure such Party against all liability related to its activities relating to the development, manufacture or sale of a Product (whether such Party's liability arises from its own conduct or by virtue of its participation in this Agreement), including liability for bodily injury, property damage, wrongful death, and any contractual indemnity obligations imposed by this Agreement; and

(b) the insurance shall be in amounts that are reasonable and customary in the United States in the pharmaceutical industry, but in no event shall liability insurance relating to manufacture, sale or distribution of a marketed product maintained by such Party cover less than [**] per occurrence (or claim) and an annual aggregate of [**]. All such policies shall include a contractual endorsement naming the other Party to this Agreement as an additional insured and require the insurance carriers to provide such other Party with no less than thirty (30) days' written notice of any change in the terms or coverage of the policies or their cancellation.

ARTICLE XIV – MISCELLANEOUS

14.1 Force Majeure. Neither Party shall lose any rights hereunder or be liable to the other Party for damages or Losses on account of failure of performance by the defaulting Party if the failure is occasioned by any cause (a "Force Majeure Event") beyond the reasonable control of the defaulting Party, including, without limitation, such Force Majeure Events as government action (including, without limitation, the issuance of a temporary injunction, preventing the manufacture or sale of a Product in the Territory), war, fire, explosion, flood, embargo, unavailability of, or shortage of raw materials or other materials, unavailability or shortage of testing solvents or materials, failure of equipment despite regular maintenance, or act of God, provided that the Party claiming force majeure event has exerted all reasonable efforts to avoid or remedy such force majeure event and given prompt notice to the other Party. The affected Party shall exert Commercially Reasonable Efforts to remedy the Force Majeure Event promptly, perform its obligations under this Agreement to the extent feasible given the Force Majeure Event, and give the other Party prompt written notice when it is again fully able to perform such obligations.

14.2 Notices. All notices or other communications given pursuant hereto by one Party hereto to the other Party shall be in writing and shall be deemed given (a) when delivered by messenger, (b) when received by the addressee, if sent by express mail, Federal Express or other express delivery service (receipt requested) or (c) three (3) days after being mailed in the U.S., first-class postage prepaid, registered or certified, in each case to the appropriate addresses and telecopy number set forth below (or to such other addresses and telecopy numbers as a Party may designate as to itself by prior advance written notice to the other Party):

Notices for TRIS shall be sent to:

TRIS Pharma, Inc.
2033 Route 130, Suite D
Monmouth Junction, NJ 08852
Attn: President
Email: kmehta@trispharma.com

Notices for AYTU shall be sent to:

Aytu Bioscience, Inc.
373 Inverness Parkway, Suite 206
Englewood, Colorado 80112
Attn: Chief Executive Officer
Email: josh.disbrow@aytubio.com

14.3 Governing Law; Dispute Resolution .

(a) This Agreement shall be governed by the laws of the State of New York, as such laws are applied to contracts entered into and to be performed within such state, as though made and to be fully performed therein without regard to conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to any sales of goods effected under this Agreement.

(b) The Parties shall initially attempt in good faith to resolve any significant controversy, claim, allegation of a material breach or dispute arising out of or relating to this Agreement (collectively, a "**Dispute**") through negotiations between senior executives of AYTU and TRIS. The senior executives shall meet promptly to discuss the matter submitted and to attempt to determine a resolution. If the Dispute is not resolved within thirty (30) days (or such other period of time mutually agreed upon by the Parties) of notice of the Dispute (the "**Executive Resolution Period**"), then the Parties agree to submit the Dispute to arbitration as provided herein. Unless otherwise mutually agreed by the Parties, only if the Dispute is not resolved through negotiations as set forth herein, may a party resort to arbitration.

(c) All Disputes relating in any way to this Agreement, and not resolved in accordance with the immediately preceding paragraph, shall be resolved exclusively through arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "**AAA**") as then in effect. In the event either Party demands arbitration, it shall do so within thirty (30) days after the expiration of the Executive Resolution Period (or any mutually agreed extension) and shall include a request that such arbitration be held within ninety (90) days of such demand. The arbitration hearing shall be held as soon as practicable. The arbitration hearing shall be conducted in English and held in New York, New York and shall be before a single arbitrator selected by the Parties in accordance with the Commercial Arbitration Rules of the American Arbitration Association regarding the selection of arbitrators. The arbitrator shall render a formal, binding non-appealable resolution and award on each issue as expeditiously as possible, but not more than thirty (30) days after the hearing.

(d) Notwithstanding the foregoing, prior to or following the appointment of an arbitrator, either Party may seek from any court having jurisdiction hereof any interim, provisional, or injunctive relief that may be necessary to protect the rights or property of any Party or maintain the status quo. The institution or maintenance of any judicial action or proceeding for any such interim, provisional, or injunctive relief shall not constitute a waiver of the right or obligation of either Party to submit the Dispute to arbitration.

(e) Notwithstanding anything to the contrary in this Agreement, any disputes regarding TRIS' rights with respect to the Shares may be brought by TRIS in a court of competent jurisdiction.

(f) Notwithstanding the foregoing, if a dispute involves Sections 11.3(u), 11.3(v), the last two sentences of Section 2.4, or royalties payable to the Former Owner or taxes thereon, either Party may bring an action in the courts of the State of New York sitting in New York County, New York or in the U.S. District Court for the Southern District of New York, and waives any claim and will not assert that venue should properly lie in any other location within the selected jurisdiction. The consents to jurisdiction in this paragraph will not constitute general consents to service of process in the State of New York for any purpose except as provided in this paragraph.

14.4 Non-waiver of Rights. Except as specifically provided for herein, the waiver from time to time by any of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such Party's rights or remedies provided in this Agreement.

14.5 No Agency. Neither Party shall by virtue of this Agreement have any power to bind the other to any obligation nor shall this Agreement create any relationship of agency, partnership or joint venture.

14.6 Severability. If any term, covenant, or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (i) the remainder of this Agreement, or the application of any term, covenant or condition other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each such term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law and (ii) the Parties hereto covenant and agree to renegotiate any such term, covenant, or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant, or condition of this Agreement or the application thereof that is held to be invalid or unenforceable.

14.7 Entire Agreement. This Agreement together with the Exhibits and Schedules hereto, and the Confidentiality Agreement described in Section 10.1(f), sets forth all the covenants, promises, agreements, warranties, representations, conditions, and understandings between the Parties hereto in the scope of the collaboration, and supersedes and terminates all prior agreements and understandings between the Parties with respect to matters covered by this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties.

14.8 Assignment. No Party shall, without the prior written consent (not to be unreasonably withheld, conditioned or delayed) of the other Party having been obtained, assign or transfer this Agreement to any Person, *provided, however*, that any Party may assign or transfer this Agreement to (i) (A) any Subsidiary of such Party, or (B) any direct or indirect parent of such Party which is an operating company in the business of manufacturing or distributing prescription pharmaceuticals and which owns (on a fully diluted basis) the majority of the total voting power (unrestricted in the exercise of such power by a voting or similar agreement) of shares of stock entitled to vote (without regard to the occurrence of any contingency) in the election of directors of such Party, in each case, on thirty (30) days' written notice to the other Party, provided that the assigning Party shall remain primarily liable for all obligations of assignee and assignee shall be liable for all obligations of assignor before or after such assignment, and assignor shall execute a guarantee in form and substance acceptable to the other Party, or (ii) to any Third Party successor by merger of such Party, or to a Third Party purchaser of all or substantially all of such assets of, or stock of the line of business to which this agreement relates, without the prior written consent of the other Party hereto. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns. For the avoidance of doubt, and notwithstanding anything else to the contrary contained in this Agreement, the reference to the term "Affiliates" or "Affiliate" of a Party, in the provisions of this Agreement, shall not imply that any rights or obligations under this Agreement may be assigned to any such Affiliate, except in accordance with the foregoing provisions of this Section 14.8 or as expressly provided herein; provided, that, TRIS or any of its Affiliates shall have the right to Market an AG Product in the Territory in accordance with the terms and conditions set forth in Section 6.9, and TRIS shall have the right to assign any such rights to any of its Affiliates.

14.9 Facsimile Execution. This Agreement may be executed in pdf or facsimile counterparts each of which is hereby agreed to have the legal binding effect of an original signature. The Parties hereto agree to forward the original signatures by overnight mail to the other Party upon execution.

*** CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR CERTAIN PORTIONS OF THIS EXHIBIT. CONFIDENTIAL PORTIONS OF THIS EXHIBIT ARE DESIGNATED BY [**]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first indicated above.

TRIS PHARMA, INC.

By: /s/ Peter Cicino
Name: Peter Cicino
Title: CFO & SVP Corporate Dev.

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow
Name: Joshua Disbrow
Title: Chief Executive Officer

Attachments:

Schedule I - TRIS Knowledge Representatives

Schedule II - AYTU Knowledge Representatives

Schedule 11.2(1) - Historical Deductions from Gross Sales in Determining Net Sales

*** CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR CERTAIN PORTIONS OF THIS EXHIBIT. CONFIDENTIAL PORTIONS OF THIS EXHIBIT ARE DESIGNATED BY [**]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

SCHEDULE I

TRIS Knowledge Representatives

Ketan Mehta, President and Chief Executive Officer

Peter Ciano, Senior Vice President, Corporate Development/Acting CFO

*** CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR CERTAIN PORTIONS OF THIS EXHIBIT. CONFIDENTIAL PORTIONS OF THIS EXHIBIT ARE DESIGNATED BY [**]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

SCHEDULE II

AYTU Knowledge Representatives

Josh Disbrow, CEO
Jarrett Disbrow, COO
David Green, CFO

SCHEDULE 11.2(I)

Historical Deductions from Gross Sales for Calculation of Net Sales*

Managed Care rebates
Launch and Promo discounts
Pharmacy Stocking incentive
Prompt payment discount
Returns and adjustments
Government Channel
Chargebacks
Wholesaler DSA fee for service
Coupon Program (co-pay card)
Coupon Program (e Voucher)

* Although not included in the above extract of a royalty report delivered to Tris by the Former Owner, the above is not intended to limit other deductions contemplated within definition of Net Sales. Without limiting the generality of the foregoing, it is expected that payor rebates and associated administrative fees may be deducted from gross sales in calculating Net Sales.

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (this “**Agreement**”) is dated as of February 5, 2019, by and between Aytu BioScience, Inc., a Delaware corporation (the “**Company**”), and Armistice Capital Master Fund Ltd., a Cayman Islands exempted company (the “**Holder**”).

WHEREAS:

A. The Holder is the holder of a Promissory Note, dated November 29, 2018, issued by the Company in the principal amount of \$5,000,000 (the “**Note**”); and

B. The Company and the Holder desire to enter into this Agreement, pursuant to which, among other things, the Holder shall agree to exchange the Note for: (1) Common Stock of the Company, (2) Series E Convertible Preferred Stock of the Company, and (3) a Common Stock Purchase Warrant (the “**Exchange Securities**”), and the Company desires to issue the Exchange Securities in exchange for the cancellation of the Note and the satisfaction of all principal and interest owed thereunder, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. EXCHANGE.

1.1 Exchange. Subject to and upon the terms and conditions set forth in this Agreement, Holder agrees to surrender to the Company the Note and, in exchange therefore, the Company shall issue to the Holder the following Exchange Securities (collectively, the “**Exchange**”), which Exchange will also be deemed to satisfy all principal and interest owing under the Note:

1.1.1 Common Stock. The Company shall issue to the Holder 3,120,064 shares of Common Stock of the Company (the “**Common Shares**”), which is the amount that, post-exchange, would result in the Holder owning approximately 33.3% of the outstanding Common Stock of the Company.

1.1.2 Series E Convertible Preferred Stock. The Company shall issue to the Holder 2,751,148 shares of Series E Convertible Preferred Stock of the Company (the “**Preferred Shares**”). The Preferred Shares shall be subject to the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock attached hereto as Exhibit A.

1.1.3 Warrants. The Company shall issue to the Holder a Common Stock Purchase Warrant, which shall be exercisable for 4,403,409 Common Shares. The form of Common Stock Purchase Warrant is attached hereto as Exhibit B.

1.2 Closing. Upon satisfaction of the conditions set forth in Sections 4, 5 and 6 herein, the Company will issue and deliver (or cause to be issued and delivered) the Exchange Securities to the Holder, or in the name of a custodian or nominee of the Holder, or as otherwise requested by the Holder in writing, and the Holder will surrender to the Company the Note.

2. COMPANY REPRESENTATIONS AND WARRANTIES.

As a material inducement to the Holder to enter into this Agreement, the Company represents, warrants and covenants with and to the Holder as follows:

2.1 Authorization and Binding Obligation. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Company, and constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

2.2 No Conflict. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the articles of incorporation or other organizational documents of the Company or any of its subsidiaries, any capital stock of the Company or any of its subsidiaries or bylaws of the Company or any of its subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and applicable to the Company or any of its subsidiaries or by which any property or asset of the Company or any of its subsidiaries is bound or affected except, in the case of clause (ii) or (iii) above, to the extent such violations that could not reasonably be expected to have a material adverse effect on the Company or its subsidiaries.

3. HOLDER'S REPRESENTATIONS AND WARRANTIES.

As a material inducement to the Company to enter into this Agreement, the Holder represents, warrants and covenants with and to the Company as follows:

3.1 Ownership of the Note. The Holder is the legal and beneficial owner of the Note. The Holder has continuously held the Note since its issuance or purchase. The Holder, individually or through an affiliate, owns the Note outright and free and clear of any options, contracts, agreements, liens, security interests, or other encumbrances.

3.2 No Public Sale or Distribution. The Holder is acquiring the Exchange Securities in the ordinary course of business for its own account and not with a view toward, or for resale in connection with, the public sale or distribution thereof; provided, however, that by making the representations herein, the Holder does not agree to hold any of the Exchange Securities for any minimum or other specific term and reserves the right to dispose of the Exchange Securities at any time in accordance with an exemption from the registration requirements of the Securities Act of 1933, as amended (the "**Securities Act**") and applicable state securities laws. The Holder does not presently have any agreement or understanding, directly or indirectly, with any person to distribute or transfer any interest or grant participation rights in the Note or the Exchange Securities.

3.3 Accredited Investor. The Holder is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the Securities Act.

3.4 Reliance on Exemptions. The Holder understands that the Exchange is being made in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Holder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein in order to determine the availability of such exemptions and the eligibility of the Holder to complete the Exchange and to acquire its pro-rata portion of the Exchange Securities.

3.5 Disclosure of Information. The Holder has had the opportunity to review the current business prospects, financial condition and operating history of the Company as set forth in the filings that the Company has made with the U.S. Securities and Exchange Commission (the "**SEC**"), including, but not limited to, the Company's 10-K for the year ended June 30, 2018, which was filed by the Company with the SEC on September 6, 2018 and such other reports filed by the Company with the SEC since July 1, 2018. The Holder has also had the opportunity to ask questions and receive answers from the Company regarding the terms and conditions pertaining to its execution of this Agreement and the Holder has received all the information the Holder considers necessary or appropriate for deciding whether to enter into this Agreement.

3.6 Risk. The Holder understands that its investment in the Exchange Securities involves a high degree of risk. The Holder is able to bear the risk of an investment in the Exchange Securities including, without limitation, the risk of total loss of its investment. The Holder has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to the Exchange.

3.7 No Governmental Review. The Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement in connection with the Exchange or the fairness or suitability of the investment in the Exchange Securities nor have such authorities passed upon or endorsed the merits of the Exchange Securities.

3.8 Authorization and Binding Obligation. The Holder has the requisite power and authority to enter into and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Holder, and constitutes the legal, valid and binding obligations of the Holder, enforceable against the Holder in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

3.9 Prior Investment Experience. The Holder acknowledges that it has prior investment experience, including investment in securities of the type being exchanged, including the Note or the Exchange Securities, and has read all of the documents furnished or made available by the Company to it and is able to evaluate the merits and risks of such an investment on its behalf, and that it recognizes the highly speculative nature of this investment.

3.10 Tax Consequences. The Holder acknowledges that the Company has made no representation regarding the potential or actual tax consequences for the Holder which will result from entering into the Agreement and from consummation of the Exchange. The Holder acknowledges that it bears complete responsibility for obtaining adequate tax advice regarding this Agreement and the Exchange.

3.11 No Registration; Resale Restrictions. The Holder acknowledges, understands and agrees that the Exchange Securities are being issued hereunder pursuant to an exemption from registration under the Securities Act and as such will not be available for resale to the public until a registration statement has been filed under the Securities Act or the Holder has complied with a resale exemption under the Securities Act.

4. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PARTIES. The obligation of each of the Company and the Holder to consummate the transactions contemplated by this Agreement is subject to the satisfaction on the date of closing the transactions contemplated by this Agreement (the "**Closing Date**") of the following condition:

4.1 Stockholder Approval. The stockholders of the Company shall have approved of the issuance of the Exchange Securities.

5. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY. The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction on the Closing Date of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing the Holder with prior written notice thereof:

5.1 Delivery. The Holder shall have delivered to the Company the Note.

5.2 No Prohibition. No order of any court, arbitrator, or governmental or regulatory authority shall be in effect which purports to enjoin or restrain any of the transactions contemplated by this Agreement.

5.3 Representations. The accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Holder contained herein (unless as of a specific date therein).

6. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE HOLDER. The obligation of the Holder to consummate the transactions contemplated by this Agreement is subject to the satisfaction on the Closing Date of each of the following conditions, provided that these conditions are for the Holder's sole benefit and may be waived by the Holder at any time in its sole discretion by providing the Company with prior written notice thereof:

6.1 No Prohibition. No order of any court, arbitrator, or governmental or regulatory authority shall be in effect which purports to enjoin or restrain any of the transactions contemplated by this Agreement.

6.2 Representations. The accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein).

6.3 Obligations. All obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed, subject to any required stockholder approval.

7. COVENANTS.

7.1 No Trading. The Holder agrees not to directly or indirectly purchase, sell, make any short sale of, loan or grant any option for the purchase of, or otherwise transfer or dispose of the Company's Common Stock (or other securities, warrants, or other forms of convertible securities outstanding or other rights to acquire such securities) until the Company has filed a report with the SEC announcing this Agreement and the transactions contemplated herein.

7.2 UCC Termination. The Holder agrees, promptly following the Closing Date, to file a UCC-3 Financing Statement Amendment in the appropriate jurisdictions to evidence the termination of the Holder's security interest in any collateral pursuant to the Note.

7.3 Registration. The Company agrees that, within 180 days of the Closing Date, it will register the Common Shares, the shares of Common Stock into which the Preferred Shares are convertible and the shares of Common Stock into which the Common Stock Purchase Warrant is exercisable.

8. MISCELLANEOUS.

8.1 Legends. The Holder acknowledges that the certificate(s) representing the shares issuable upon the exercise of the Warrant shall each conspicuously set forth on the face or back thereof a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

8.2 Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York, New York 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 any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement 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 manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

8.3 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same Agreement. This Agreement, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an "**Electronic Delivery**"), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms hereof and deliver them in person to all other parties. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

8.4 Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

8.5 Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

8.6 Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Holder, the Company, their affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement contains the entire understanding of the parties with respect to the matters covered herein and, except as specifically set forth herein, neither the Company nor the Holder makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Holder, and any amendment to this Agreement made in conformity with the provisions of this Section shall be binding upon the Holder. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

8.7 Fees and Expenses. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

8.8 Notices. To be effective, any notice, consent, or communication required or permitted to be given in connection with this Agreement must be in writing and personally delivered or sent by messenger, fax, overnight courier, electronic mail, or certified mail and when to the Company, addressed to Aytu BioScience, Inc. 373 Inverness Parkway, Suite 206, Englewood, Colorado 80112, email, dgreen@aytubio.com, attention David Green, Chief Financial Officer, or in the case of the Holder, to the Holder's address indicated on the Holder's signature page, or to such other address and/or email address and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. All notices, consents, and communications are deemed delivered and received by the receiving party (i) if personally delivered or delivered by messenger, on the date of delivery or on the date delivery was refused, (ii) if delivered by fax transmission or electronic mail, upon receipt of confirmation of the party transmitting such fax or electronic mail, or (iii) if delivered by overnight courier or certified mail, on the date of delivery as established by the return receipt, courier service confirmation, or similar documentation (or the date on which the courier or postal service, as the case may be, confirms that acceptance of delivery was refused or undeliverable).

8.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Holder. The Holder may not assign some or all of its rights hereunder without the consent of the Company.

8.10 Survival of Representations. The representations and warranties of the Company and the Holder contained in Sections 2 and 3, respectively, will survive the closing of the transactions contemplated by this Agreement.

8.11 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty.

[signature page follows]

IN WITNESS WHEREOF, the Holder and the Company have caused their respective signature pages to this Agreement to be duly executed as of the date first written above.

COMPANY:

AYTU BIOSCIENCE, INC.

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

HOLDER:

ARMISTICE CAPITAL MASTER FUND LTD.

By: /s/ Tohuan Steve Chen
Name: Tohuan Steve Chen
Title: Controller of the Investment Manager

Address for Notice to Holder, including email address:

Address for Delivery of the Exchange Securities (if different than the address for Notice to the Holder):

CERTIFICATE OF DESIGNATION

Exhibit B
Form of Common Stock Purchase Warrant

COMMON STOCK PURCHASE WARRANT

AYTU BIOSCIENCE, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E 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, [●] 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 [●] 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 Issuer Direct Corporation, the current transfer agent of the Corporation with a mailing address of [●] and a facsimile number of [●], and any successor transfer agent of the Corporation.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Preferred Stock then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as Series E Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to [●] (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 \$0.88, subject to increase set forth in Section 3 below (the "Stated Value"). The Preferred Stock will initially be issued in book-entry form. 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 \$0.88, 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, if registered with the Commission, shall be free of restrictive legends and trading restrictions, and (B) a bank check in the amount of accrued and unpaid dividends, if any. 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. Notwithstanding the foregoing, with respect to any Notice(s) of Conversion delivered by 12:00 p.m. (New York City time) on the Original Issue Date, the Corporation agrees to deliver the Conversion Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Original Issue Date, and the Original Issue Date being deemed the "Share Delivery Date" with respect to any such Notice(s) 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 is absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(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 40% of the number of shares of 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 decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock. 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 above 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 E Convertible Preferred Stock.

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

IN WITNESS WHEREOF, the undersigned have executed this Certificate this [●] day of [●], 2019.

Name:

Title:

Name:

Title:

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 E 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: _____

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

AYTU BIOSCIENCE, INC.

Warrant Shares:

Initial Exercise Date: [●], 2019

[●]

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, Armistice Capital Master Fund Ltd or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after [●], 2019 (the "Initial Exercise Date") and on or prior to the close of business on the five (5) year anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Aytu BioScience, Inc., a Delaware corporation (the "Company"), up to [●] shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"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 under the Securities Act.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on OTC Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

¹ Equal to 75% of the number of shares of common stock and preferred stock issued in the transaction.

"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.

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

"Common Stock" means the common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant 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.

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

"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.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

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

"Trading Day" means a day on which the Common Stock is traded on a Trading Market.

"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, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"Transfer Agent" means Issuer Direct Corporation, with a mailing address of [●] and a facsimile number of [●], and any successor transfer agent of the Company.

"Warrants" means this Warrant and other Common Stock Purchase Warrants issued by the Company pursuant to an Exchange Agreement between the Company and the Holder dated as of [●], 2019.

Section 2. Exercise.

a) Subject to the limitations set forth in this Section, exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before close of business on the Termination Date by delivery to the Company of a duly executed facsimile copy (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be \$1.00, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If after six months from the Initial Exercise Date there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c). Notwithstanding anything herein to the contrary but without limiting the rights of the Holder to receive Warrant Shares on a "cashless exercise" and without limiting the liquidated damages provision in section 2(d)(i) and the Buy-In provision in Section 2(d)(iv), in the event there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, under no circumstance will the Company be required to net cash settle the warrants.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker 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 the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, 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 Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the 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 the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, non-exercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or non-converted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company 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 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the 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 Company, including this Warrant, by the 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 40% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may decrease the Beneficial Ownership Limitation provisions of this Section 2(e). The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(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 3(a) above, if at any time the Company 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 exercise of this Warrant (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 Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, 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 Company 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 Company, 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 Company, 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 or group of Persons whereby such other Person or group 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 exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, 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 Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise 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 Company shall apportion the Exercise 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 exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (which approval shall not be unreasonably withheld or delayed) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable 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 exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant 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 Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

e) Calculations. All calculations under this Section 3 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 3, 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 treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock 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 Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 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 in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. This Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the original Initial Exercise Date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

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

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and non-assessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal Proceedings concerning the interpretation, enforcement and defense of this Warrant shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any provision hereunder), and hereby irrevocably waives, and agrees not to assert in any suit, action or Proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such Proceeding. Each party 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 Warrant. If any party shall commence an action or Proceeding to enforce any provisions of this Warrant, 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.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate Proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 373 Inverness Parkway, Suite 206, Englewood, Colorado 80112, Attention: Chief Executive Officer, facsimile number: (720) 437-6527, email address: Josh.Disbrow@aytubio.com or such other facsimile number, email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time 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 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.

i) Reserved.

j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder or the beneficial owner of this Warrant, on the other hand.

n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of [●], 2019.

AYTU BIOSCIENCE, INC.

By: _____

Name:

Title:

NOTICE OF EXERCISE

TO: AYTU BIOSCIENCE, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Tax ID Number: _____

(4) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name:
(Please Print)

Address:
(Please Print)

Phone Number:

Email Address:

Dated: _____, _____

Holder's Signature:

Holder's Address:

WAIVER OF BLOCKER

This WAIVER OF BLOCKER (this "**Waiver**") is entered into effective as of February 5, 2019 (the "**Effective Date**") between Armistice Capital Master Fund Ltd., a Cayman Islands exempted company ("**Armistice**"), and Aytu BioScience, Inc., a Delaware corporation ("**Aytu**").

RECITALS

WHEREAS, pursuant to Section 6(d) of the Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock (the "**COD**") of Aytu, Aytu shall not effect any conversion of the Series C Convertible Preferred Stock of Aytu (the "**Preferred Stock**"), and Armistice shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion, Armistice would beneficially own in excess of 4.99% (or, upon election by Armistice prior to the issuance of any shares of Preferred Stock, 9.99%) of the number of shares of the common stock of Aytu ("**Common Stock**") outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Preferred Stock by Armistice (the "**Beneficial Ownership Limitation**"); and

WHEREAS, the parties agree to waive the Beneficial Ownership Limitation solely with respect to Armistice.

NOW THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Waiver. Each undersigned party hereby irrevocably and unconditionally waives the Beneficial Ownership Limitation in Section 6(d) of the COD solely with respect to Armistice.
2. Effectiveness. This Waiver shall be deemed effective as of the Effective Date. The recitals to this Waiver are hereby incorporated by reference into and made a part of this Waiver for all purposes.
3. Counterparts. This Waiver and any amendments, waivers, consents or supplements may be executed in any number of counterparts (including by facsimile or other electronic means, including .pdf format) and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Waiver shall become effective upon the execution of a counterpart hereof by each of the parties.
4. Governing Law. THIS WAIVER SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

[Signature page follows]

IN WITNESS WHEREOF, this Waiver has been duly executed by the undersigned as of the Effective Date.

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow
Name: Joshua Disbrow
Title: Chief Executive Officer

ARMISTICE CAPITAL MASTER FUND LTD.

By: /s/ Tohuan Steve Chen
Name: Tohuan Steve Chen
Title: Controller of the Investment Manager

[Signature Page to Waiver of Blocker]

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: February 7, 2019

By:
Title:

/s/ Joshua R. Disbrow
Joshua R. Disbrow
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: February 7, 2019

By:
Title:

/s/ David A. Green
David A. Green
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 December 31, 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: February 7, 2019

/s/ Joshua R. Disbrow
Joshua R. Disbrow
Chief Executive Officer

Dated: February 7, 2019

/s/ David A. Green
David A. Green
Chief Financial Officer
