

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

---

**FORM 8-K**

---

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

**Date of Report (Date of earliest event reported): September 19, 2019**

---

**CytoDyn Inc.**

(Exact name of registrant as specified in its charter)

---

**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-49908**  
(SEC  
File Number)

**83-1887078**  
(I.R.S. Employer  
Identification No.)

**1111 Main Street, Suite 660  
Vancouver, Washington**  
(Address of principal executive offices)

**98660**  
(Zip Code)

**Registrant's telephone number, including area code: (360) 980-8524**

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
<b>None.</b>	<b>None.</b>	<b>None.</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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. ☐

---

---

### Item 1.01. Entry into a Material Definitive Agreement.

On September 19, 2019, CytoDyn Inc. (the “Company”) entered into Subscription Agreements (the “Subscription Agreements”) with certain investors (the “Investors”) for the sale by the Company of 2,330,000 shares (the “Common Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), in a registered direct offering (the “Offering”). The Investors in the Offering also received warrants to purchase 1,165,000 shares of Common Stock (the “Warrants”). Each share of Common Stock was sold together with one half of one Warrant to purchase one share of Common Stock for a combined purchase price of \$0.40.

The aggregate gross proceeds for the sale of the Common Shares and Warrants will be approximately \$0.9 million. Subject to certain ownership limitations, the Warrants will be exercisable commencing on the issuance date at an exercise price equal to \$0.45 per share of Common Stock, subject to adjustments as provided under the terms of the Warrants. The Warrants are exercisable for five years from the date of issuance. The closing of the sales of these securities under the Subscription Agreements is expected to occur on or about September 19, 2019.

The net proceeds to the Company from the transactions, after deducting the Company’s estimated offering expenses (including a cash “tail” fee to our placement agent in certain prior offerings, as described below), and excluding the proceeds, if any, from the exercise of the Warrants, are expected to be approximately \$0.9 million. The Company intends to use the net proceeds from the transactions to fund clinical trials for its lead product candidate and for general corporate purposes.

The securities sold in the Offering were offered and sold by the Company pursuant to an effective shelf registration statement on Form S-3, which was initially filed with the Securities and Exchange Commission (the “SEC”) on February 23, 2018 and subsequently declared effective on March 7, 2018 (File No. 333-223195) (the “Registration Statement”), and the base prospectus dated as of March 7, 2018 contained therein. The Company will file a prospectus supplement with the SEC in connection with the sale of the securities.

The representations, warranties and covenants contained in the Subscription Agreements were made solely for the benefit of the parties to the Subscription Agreements. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Subscription Agreements and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the forms of the Subscription Agreements are included with this filing only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Subscription Agreements, which subsequent information may or may not be fully reflected in public disclosures.

In connection with the Offering, the Company will pay to a prior placement agent (the “Prior Placement Agent”), pursuant to placement agent agreements entered into in connection with prior offerings, (i) a cash fee of approximately \$66,580, which is based on a percentage of the gross proceeds, as set forth in each placement agent agreement, received from Investors in the Offering who were first introduced to the Company by the Prior Placement Agent in a prior offering and (ii) warrants to purchase an aggregate of 148,200 shares of Common Stock (the “Prior Placement Agent Warrants”), which is based on a percentage of the number of shares of common stock, set forth in each placement agent agreement, issued to Investors in the Offering who were first introduced to the Company by the Prior Placement Agent in a prior offering. Of the aggregate Prior Placement Agent Warrants to be issued, 65,625 will have an exercise price of \$0.50 per share and 82,575 will have an exercise price of \$0.40 per share, with the exercise price determined by the prior offering to which each Prior Placement Agent Warrant relates. The Prior Placement Agent Warrants and the shares issuable upon exercise of the Prior Placement Agent Warrants will be issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and in reliance on similar exemptions under applicable state laws.

The form of Warrant is filed as Exhibit 4.1 to the Current Report on Form 8-K filed on August 29, 2019. The form of Subscription Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K. The foregoing summaries of the terms of these documents are subject to, and qualified in their entirety by, such documents, which are incorporated herein by reference.

The legal opinion and consent of Lowenstein Sandler LLP relating to the securities are filed as Exhibit 5.1 to this Current Report on Form 8-K.

### Item 3.02. Unregistered Sales of Equity Securities.

See Item 1.01 with respect to the Prior Placement Agent Warrants.

In addition, on September 10, 2019, the Company received a redemption notice from the holder of the Company’s convertible note issued on June 26, 2018 requesting the redemption of an aggregate of \$175,000 of the outstanding balance thereof. In satisfaction of the redemption notice, the Company issued 526,419 shares of Common Stock to the note holder in accordance with the terms of the convertible note. Following the redemption, the outstanding balance of the convertible note, including accrued but unpaid interest, was approximately \$3.7 million. The Company relied upon the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended, and upon similar exemptions under applicable state laws, in connection with this redemption.

### Item 9.01. Financial Statements and Exhibits.

(d)	Exhibit No.	Description.
	4.1	<a href="#">Form of Warrant Agreement (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on August 29, 2019).</a>
	5.1	<a href="#">Opinion of Lowenstein Sandler LLP.</a>
	10.1	<a href="#">Form of Subscription Agreement.</a>
	23.1	<a href="#">Consent of Lowenstein Sandler LLP (included in the opinion of Lowenstein Sandler LLP as Exhibit 5.1).</a>

---

**SIGNATURES**

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

September 19, 2019

CytoDyn Inc.

By: /s/ Michael D. Mulholland

Name: Michael D. Mulholland

Title: Chief Financial Officer

September 19, 2019

CytoDyn Inc.  
1111 Main Street, Suite 660  
Vancouver, Washington 98660

Ladies and Gentlemen:

We have acted as counsel for CytoDyn Inc., a Delaware corporation (the “Company”), in connection with the sale and issuance of up to 2,330,000 shares of the Company’s common stock, par value \$0.001 per share (the “Shares”) and warrants (the “Warrants”) to purchase up to an aggregate of 1,165,000 shares of Common Stock (the “Warrant Shares”) pursuant to the Registration Statement on Form S-3 (File No. 333-223195) (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), and the rules and regulations promulgated thereunder, and declared effective by the Commission on March 7, 2018. The Shares and Warrants are to be sold to certain investors pursuant to a Subscription Agreement with each investor, each dated as of September 19, 2019 (the “Subscription Agreements”).

As counsel to the Company in connection with the proposed potential issuance and sale of the above-referenced Shares, we have examined: (i) the Company’s Certificate of Incorporation and Bylaws, each as amended to date; (ii) certain resolutions of the Board of Directors of the Company relating to the sale of the Shares and Warrants; (iii) the Subscription Agreements and (iv) such other proceedings, documents and records as we have deemed necessary to enable us to render this opinion. In all such examinations, we have assumed the genuineness of all signatures, the authenticity of all documents, certificates and instruments submitted to us as originals and the conformity with the originals of all documents submitted to us as copies. We have also assumed that any certificates representing the Shares conform to the Specimen Common Stock Certificate filed as Exhibit 4.1 to the Registration Statement. We have, among other things, relied upon certificates of public officials and, as to various factual matters, certificates of officers of the Company.

Based on the foregoing, and subject to the assumptions, limitations and qualifications set forth herein, we are of the opinion that (i) the Shares, when issued, sold and paid for in accordance with the terms and conditions of the Subscription Agreements, will be validly issued, fully paid and nonassessable; (ii) the Warrants have been duly and validly authorized and when issued and sold in accordance with the terms and conditions of the Subscription Agreements, will be valid and binding obligations of the Company; and (iii) the Warrant Shares, when issued, sold and paid for in accordance with the terms of the Warrants will be validly issued, fully paid and non-assessable.

It is understood that this opinion is to be used only in connection with the offer, sale and issuance of the Shares, the Warrants and the Warrant Shares while the Registration Statement is in effect.

We hereby consent to the use of this opinion as an exhibit to the Company’s Current Report on Form 8-K dated September 19, 2019. In giving this consent, we do not admit that we are “experts” within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required by Section 7 of the Securities Act.

The opinions set forth in this letter are limited solely to the Delaware General Corporation Law and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or any other laws, or as to any matters of municipal law or the laws of any local agencies within any state.

Very truly yours,

/s/ Lowenstein Sandler LLP  
Lowenstein Sandler LLP

## SUBSCRIPTION AGREEMENT

CytoDyn Inc.  
1111 Main Street, Suite 660  
Vancouver, Washington

The undersigned (the “*Investor*”) hereby confirms its agreement with CytoDyn Inc., a Delaware corporation (the “*Company*”), as follows:

1. This Subscription Agreement, including the Terms and Conditions For Purchase of Shares and Warrants attached hereto as Annex I (collectively, (this “*Agreement*”) is made as of the date set forth below between the Company and the Investor.

2. The Company has authorized the issuance and sale to certain investors of (i) shares (each a “*Share*,” collectively, the “*Shares*”) of its common stock, par value \$0.001 per share (the “*Common Stock*”) and (ii) warrants (each, a “*Warrant*,” and, collectively, the “*Warrants*”), each to purchase one share of Common Stock at an exercise price of \$0.45 per share, exercisable for a period of five (5) years from its original date of issuance, to be evidenced by a Common Stock Purchase Warrant in substantially the form attached hereto as Annex III; with such Shares and Warrants to be issued at an aggregate purchase price of \$0.40 (the “*Purchase Price*”) per fixed combination of one Share and one-half Warrant. The Shares and Warrants are immediately separable and will be issued separately. The shares of Common Stock issuable upon exercise of the Warrants are referred to herein as the “*Warrant Shares*” and, together with the Shares and the Warrants, are referred to herein as the “*Securities*.”

3. The offering and sale of the Securities (the “*Offering*”) are being made pursuant to (1) an effective Registration Statement on Form S-3, No. 333-223195 (the “*Registration Statement*”) filed by the Company with the Securities and Exchange Commission (the “*Commission*”) and declared effective on March 7, 2018 (including the base prospectus contained therein (the “*Base Prospectus*”)), (2) if applicable, certain “free writing prospectuses” (as that term is defined in Rule 405 under the Securities Act of 1933, as amended (the “*Securities Act*”)), that have been or will be filed (if required) with the Commission and delivered to the Investor on or prior to the date hereof, containing certain supplemental information regarding the Securities, the terms of the Offering and the Company (the “*Issuer Free Writing Prospectus*”), and (3) a prospectus supplement (the “*Prospectus Supplement*” and together with the Base Prospectus, the “*Prospectus*”) containing certain supplemental information regarding the Securities and terms of the Offering that has been or will be filed with the Commission and delivered to the Investor (or made available to the Investor by the filing by the Company of an electronic version thereof with the Commission).

4. The Company and the Investor agree that the Investor will purchase from the Company and the Company will issue and sell to the Investor the Shares and Warrants set forth below for the aggregate purchase price set forth below. The Shares and Warrants shall be purchased pursuant to the Terms and Conditions for Purchase of Shares and Warrants attached hereto as Annex I and incorporated herein by this reference as if fully set forth herein.

5. The settlement of the Shares purchased by the Investor shall be effected by crediting the account of the Investor's prime broker with the Depository Trust Company ("DTC") through its Deposit/Withdrawal At Custodian ("DWAC") delivery system, whereby Investor's prime broker (as specified by such Investor on Annex II attached hereto) shall initiate a DWAC transaction on the Closing Date using its DTC participant identification number, and released by Computershare, the Company's transfer agent (the "Transfer Agent"), at the Company's direction. **NO LATER THAN ONE (1) BUSINESS DAY AFTER THE EXECUTION OF THIS AGREEMENT BY THE INVESTOR AND THE COMPANY, THE INVESTOR SHALL:**

- (I) **DIRECT THE BROKER-DEALER AT WHICH THE ACCOUNT OR ACCOUNTS TO BE CREDITED WITH THE SHARES ARE MAINTAINED TO SET UP A DWAC INSTRUCTING THE TRANSFER AGENT TO CREDIT SUCH ACCOUNT OR ACCOUNTS WITH THE SHARES, AND**
- (II) **REMIT BY WIRE TRANSFER THE AMOUNT OF FUNDS EQUAL TO THE AGGREGATE PURCHASE PRICE FOR THE SHARES AND WARRANTS BEING PURCHASED BY THE INVESTOR TO THE FOLLOWING ACCOUNT:**

[\*\*\*]

**IT IS THE INVESTOR'S RESPONSIBILITY TO (A) MAKE THE NECESSARY WIRE TRANSFER IN A TIMELY MANNER AND (B) ARRANGE FOR SETTLEMENT BY WAY OF DWAC IN A TIMELY MANNER. IF THE INVESTOR DOES NOT DELIVER THE AGGREGATE PURCHASE PRICE FOR THE SHARES AND WARRANTS OR DOES NOT MAKE PROPER ARRANGEMENTS FOR SETTLEMENT IN A TIMELY MANNER, THE SHARES AND WARRANTS MAY NOT BE DELIVERED AT CLOSING TO THE INVESTOR OR THE INVESTOR MAY BE EXCLUDED FROM THE CLOSING ALTOGETHER.**

6. The executed Warrants shall be delivered in accordance with the terms thereof.

7. The Investor represents that, except as set forth below, (a) it has had no position, office or other material relationship within the past three years with the Company or persons known to it to be affiliates of the Company, (b) it is not a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") or an Associated Person (as such term is defined under the FINRA's NASD Membership and Registration Rules Section 1011) as of the Closing, and (c) neither the Investor nor any group of Investors (as identified in a public filing made with the Commission) of which the Investor is a part in connection with the Offering, acquired, or obtained the right to acquire, 20% or more of the Common Stock (or securities convertible into or exercisable for Common Stock) or the voting power of the Company on a post-transaction basis. Exceptions:

---

(If no exceptions, write "none." If left blank, response will be deemed to be "none.")

8. The Investor represents that it has received (or otherwise had made available to it by the filing by the Company of an electronic version thereof with the Commission) the Base Prospectus, dated March 7, 2018, which is a part of the Company's Registration Statement, the documents incorporated by reference therein and any free writing prospectus (collectively, the "*Disclosure Package*"), prior to or in connection with the receipt of this Agreement. The Investor acknowledges that, prior to the delivery of this Agreement to the Company, the Investor will receive certain additional information regarding the Offering, including pricing information (the "*Offering Information*"). Such information may be provided to the Investor by any means permitted under the Securities Act, including the Prospectus Supplement, a free writing prospectus and oral communications.

9. No offer by the Investor to buy Shares and Warrants will be accepted and no part of the Purchase Price will be delivered to the Company until the Investor has received the Offering Information and the Company has accepted such offer by countersigning a copy of this Agreement, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to the Company sending (orally, in writing or by electronic mail) notice of its acceptance of such offer. An indication of interest will involve no obligation or commitment of any kind until the Investor has been delivered the Offering Information and this Agreement is accepted and countersigned by or on behalf of the Company.

10. The Company acknowledges that the only material, non-public information relating to the Company or its subsidiaries that the Company, its employees or agents has provided to the Investor in connection with the Offering prior to the date hereof is the existence of the Offering.

Number of Shares: \_\_\_\_\_

Number of Warrants / Warrants Shares: \_\_\_\_\_

Purchase Price Per Combined Share and One-Half of One Warrant: \$0.40

Aggregate Purchase Price: \$\_\_\_\_\_

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

\_\_\_\_\_  
INVESTOR

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

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

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

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

Email: \_\_\_\_\_

Agreed and Accepted

**CYTODYN INC.**

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

Name:

Title:

Dated as of: \_\_\_\_\_



---

**ANNEX I**

**TERMS AND CONDITIONS FOR PURCHASE OF SHARES AND WARRANTS**

**1. Authorization and Sale of the Shares and Warrants.** Subject to the terms and conditions of this Agreement, the Company has authorized the sale of the Shares and Warrants.

**2. Agreement to Sell and Purchase the Shares and Warrants.**

**2.1** At the Closing (as defined in Section 3.1), the Company will sell to the Investor, and the Investor will purchase from the Company, upon the terms and conditions set forth herein, the number of Shares and Warrants set forth on the last page of the Agreement to which these Terms and Conditions for Purchase of Shares and Warrants are attached as Annex I (the “*Signature Page*”) for the aggregate purchase price therefor set forth on the Signature Page.

**2.2** The Company proposes to enter into substantially this same form of Subscription Agreement with certain other investors (the “*Other Investors*”) and expects to complete sales of Shares and Warrants to them. The Investor and the Other Investors are hereinafter sometimes collectively referred to as the “*Investors*,” and this Agreement and the Subscription Agreements executed by the Other Investors are hereinafter sometimes collectively referred to as the “*Agreements*.”

**2.3** The Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information, except as will be disclosed in the Prospectus and/or in one or more filings pursuant to the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”) to be made by the Company with the Commission and incorporated by reference into the Prospectus prior to the consummation of the Offering. The Company understands and confirms that the Investor will rely on the foregoing representations in effecting transactions in securities of the Company.

**3. Closings and Delivery of the Shares and Warrants and Funds.**

**3.1 Closing.** The completion of the purchase and sale of the Shares and Warrants (the “*Closing*”) shall occur at a place and time (the “*Closing Date*”) to be specified by the Company, and of which the Investors will be notified in advance by the Company. At the Closing, (a) the Company shall cause Computershare, the Company’s transfer agent (the “*Transfer Agent*”), to deliver to the Investor the number of Shares set forth on the Signature Page registered in the name of the Investor or, if so indicated on the Investor Questionnaire attached hereto as Annex II, in the name of a nominee designated by the Investor (b) the Company shall cause to be delivered to the Investor one Common Stock Purchase Warrant, in substantially the form attached hereto as Appendix II, evidencing Warrants to purchase the number of Warrant Shares set forth on the Signature Page and (c) the aggregate purchase price for the Shares and Warrants being purchased by the Investor will be delivered by or on behalf of the Investor to the Company.

### **3.2 Conditions to the Obligations of the Parties**

(a) **Conditions to the Company's Obligations.** The Company's obligation to issue and sell the Shares and Warrants to the Investor shall be subject to: (i) the receipt by the Company of the purchase price for the Shares and Warrants being purchased hereunder as set forth on the Signature Page and (ii) the accuracy of the representations and warranties made by the Investor and the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing Date.

(b) **Conditions to the Investor's Obligations.** The Investor's obligation to purchase the Shares and Warrants will be subject to the accuracy of the representations and warranties made by the Company and the fulfillment of those undertakings of the Company to be fulfilled prior to the Closing Date. The Investor's obligations are expressly not conditioned on the purchase by any or all of the Other Investors of the Shares and Warrants that they have agreed to purchase from the Company.

**3.3 Settlement Procedures.** The settlement of the Shares purchased by the Investor shall be effected by crediting the account of the Investor's prime broker (as specified by such Investor on Annex II attached hereto) with the Depository Trust Company ("DTC") through its Deposit/Withdrawal At Custodian ("DWAC") delivery system.

(a) **Delivery of Funds. No later than one (1) business day after the execution of this Agreement by the Investor and the Company,** the Investor shall remit by wire transfer the amount of funds equal to the aggregate purchase price for the Shares and Warrants being purchased by the Investor to the following account designated by the Company:

[\*\*\*]

(b) **Delivery of Shares. No later than one (1) business day after the execution of this Agreement by the Investor and the Company,** the Investor shall direct the broker-dealer at which the account or accounts to be credited with the Shares being purchased by such Investor are maintained, which broker/dealer shall be a DTC participant, to set up a DWAC instructing the Transfer Agent to credit such account or accounts with the Shares. Such DWAC instruction shall indicate the settlement date for the deposit of the Shares, which date shall be provided to the Investor by the Company. Upon the closing of the Offering, the Company shall direct the Transfer Agent to credit the Investor's account or accounts with the Shares pursuant to the information contained in the DWAC.

### **4. Representations, Warranties and Covenants of the Investor.**

The Investor acknowledges, represents and warrants to, and agrees with, the Company that:

**4.1** The Investor (a) is knowledgeable, sophisticated and experienced in making, and is qualified to make decisions with respect to, investments in securities presenting an investment decision like that involved in the purchase of the Shares and Warrants, including investments in securities issued by the Company and investments in comparable companies, (b) has answered all questions on the Signature Page and the Investor Questionnaire and the answers thereto are

true and correct as of the date hereof and will be true and correct as of the Closing Date and (c) in connection with its decision to purchase the number of Shares and Warrants set forth on the Signature Page, has received and is relying only upon the Disclosure Package and the documents incorporated by reference therein.

4.2 (a) No action has been or will be taken in any jurisdiction outside the United States by the Company that would permit an offering of the Shares and Warrants, or possession or distribution of offering materials in connection with the issue of the Securities in any jurisdiction outside the United States where action for that purpose is required, and (b) if the Investor is outside the United States, it will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

4.3 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and (b) this Agreement constitutes a valid and binding obligation of the Investor enforceable against the Investor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and except as to the enforceability of any rights to indemnification or contribution that may be violative of the public policy underlying any law, rule or regulation (including any federal or state securities law, rule or regulation).

4.4 The Investor understands that nothing in this Agreement, the Prospectus, the Disclosure Package or any other materials presented to the Investor in connection with the purchase and sale of the Shares and Warrants constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors and made such investigation as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Shares and Warrants. The Investor also understands that there is no established public trading market for the Warrants being offered in the Offering, and that the Company does not expect such a market to develop. In addition, the Company does not intend to apply for listing of the Warrants on any securities exchange. The Investor understands that without an active market, the liquidity of the Warrants will be limited.

4.5 The Investor will maintain the confidentiality of all information acquired as a result of the transactions contemplated hereby prior to the public disclosure of that information by the Company in accordance with Section 13 of this Annex.

4.6 Since the time at which the Company first contacted such Investor about the Offering, the Investor has not disclosed any information regarding the Offering to any third parties (other than its legal, accounting and other advisors) and has not engaged in any purchases or sales of the securities of the Company (including, without limitation, any Short Sales (as defined herein) involving the Company's securities). The Investor covenants that it will not engage in any purchases or sales of the securities of the Company (including Short Sales) prior to the time that the transactions contemplated by this Agreement are publicly disclosed. The Investor agrees that it will not use any of the Securities acquired pursuant to this Agreement to cover any short position in the Common Stock if doing so would be in violation of applicable

securities laws. For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, whether or not against the box, and all types of direct and indirect stock pledges, forward sales contracts, options, puts, calls, short sales, swaps, "put equivalent positions" (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker dealers or foreign regulated brokers.

**4.7** The Investor is acquiring the Shares and Warrants (including, upon the exercise of the Warrants, the Warrant Shares) solely for such Investor's own account for investment purposes only and not with a view to or intent of resale or distribution thereof, in whole or in part. The Investor has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of the Shares, the Warrants, or the Warrant Shares, and the Investor has no plans to enter into any such agreement or arrangement. The Investor agrees to make due inquiry regarding, and not to sell or transfer the Shares, the Warrants or the Warrant Shares in violation of, any federal and/or state securities laws applicable to the Investor.

**4.8** The Investor has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Securities and is able to bear the economic risks of such investment.

**4.9** The Investor is unaware of, is in no way relying on, and did not become aware of the Offering through or as a result of, any form of general solicitation or general advertising including, without limitation, any article, notice, advertisement or other communication published in any newspaper, magazine or similar media or broadcast over television, radio or the Internet (including, without limitation, internet "blogs," bulletin boards, discussion groups and social networking sites) in connection with the Offering and sale of the Securities and is not subscribing for the Securities and did not become aware of the Offering through or as a result of any seminar or meeting to which the Investor was invited by, or any solicitation of a subscription by, a person not previously known to the Investor in connection with investments in securities generally.

**4.10** The Investor meets the suitability standards set forth in Part B of the Investor Questionnaire attached hereto as Annex II.

**4.11** The Investor is aware that Paulson Investment Company, LLC (the "Placement Agent") has acted as placement agent for the Company in previous offerings of its debt and equity securities, and for services the Placement Agent has provided the Company in past offerings will receive, with respect to certain subscriptions made in this Offering, (a) cash compensation equal to 5%, 9% or 12%, depending on the prior offering in which the Placement Agent introduced the subscriber to the Company, of the gross proceeds received by the Company from certain subscribers that were first introduced to the Company by the Placement Agent in prior offerings and (b) a warrant to purchase 9% or 10%, depending on the prior offering in which the Placement Agent introduced the subscriber to the Company, of the number of shares of Common Stock issued to certain subscribers that were first introduced to the Company by the Placement Agent in prior offerings, which are exercisable for a period of five (5) years from the date of issuance at exercise prices equal to 100% of the purchase price of the shares of Common Stock and related warrants issued in each applicable offering has taken no action that would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Agreement or the transactions contemplated hereby.

**5. Survival of Representations, Warranties and Agreements.** Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein will survive the execution of this Agreement, the delivery to the Investor of the Shares and Warrants being purchased and the payment therefor.

**6. Notices.** All notices, requests, consents and other communications hereunder will be in writing, will be mailed (a) if within the domestic United States by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or by e-mail or (b) if delivered from outside the United States, by International Federal Express or e-mail, and will be deemed given (i) if delivered by first-class registered or certified mail domestic,

three business days after so mailed, (ii) if delivered by nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two business days after so mailed and (iv) if delivered by e-mail, upon electronic confirmation of receipt, and will be delivered and addressed as follows:

(a) if to the Company, to:

CytoDyn Inc.  
1111 Main Street, Suite 660  
Vancouver, Washington 98660  
Attention: Michael D. Mulholland, Chief Financial Officer  
Email: [\*\*\*]

with a copy (which shall not constitute notice) to:

Lowenstein Sandler LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Steven M. Skolnick  
Email: [\*\*\*]

(b) if to the Investor, at its address on the Signature Page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

**7. Changes.** This Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

**8. Headings.** The headings of the various sections of this Agreement have been inserted for convenience of reference only and will not be deemed to be part of this Agreement.

**9. Severability.** In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

**10. Governing Law.** This Agreement will be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflicts of law that would require the application of the laws of any other jurisdiction.

**11. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one instrument, and will become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties. The Company and the Investor acknowledge and agree that the Company shall deliver its counterpart to the Investor along with the Prospectus Supplement (or the filing by the Company of an electronic version thereof with the Commission).

---

**12. Confirmation of Sale.** The Investor acknowledges and agrees that such Investor's receipt of the Company's signed counterpart to this Agreement, together with the Prospectus Supplement (or the filing by the Company of an electronic version thereof with the Commission), shall constitute written confirmation of the Company's sale of Shares and Warrants to such Investor.

**13. Publicity.** The Company and the Investor agree that the Company shall, as promptly as practicable following the Closing Date, file a current report on Form 8-K with the Securities and Exchange Commission including, but not limited to, a form of this Agreement and forms of Warrant as exhibits thereto.

---

**ANNEX II**

**INVESTOR QUESTIONNAIRE**

---

**ANNEX III**

**FORM OF COMMON STOCK PURCHASE WARRANT**