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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K/A
(Amendment No. 1)

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

For the fiscal year ended May 31, 2010

or

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

For the transition period from to

Commission File Number 000-49908

CYTODYN INC.

(Exact name of registrant as specified in its charter)

Colorado	**75-3056237**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer or Identification No.)**
110 Crenshaw Lake Road, Lutz, Florida	**33548**
(Address of principal executive offices)	**(Zip Code)**

Registrant's Telephone Number, including area code: (813) 527-6969

Securities registered pursuant to Section 12(b) of the Act: None

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

Title of class

Common Stock, no par value

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

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

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

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☒

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

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: $15,201,858 (as of November 30, 2010).

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date. As of November 30, 2010, the registrant had 20,942,296 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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CYTODYN INC

FORM 10-K/A FOR THE YEAR ENDED MAY 31, 2010

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THROUGHOUT THIS FILING, WE MAKE FORWARD-LOOKING STATEMENTS. THE WORDS "ANTICIPATE," "BELIEVE," "EXPECT," "INTEND," "PREDICT," "PLAN," "INTEND," "SEEK," "ESTIMATE," "PROJECT," "WILL," "CONTINUE," "COULD," "MAY," AND SIMILAR TERMS AND EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. THESE STATEMENTS INCLUDE, AMONG OTHERS, INFORMATION REGARDING FUTURE OPERATIONS, FUTURE CAPITAL EXPENDITURES, AND FUTURE NET CASH FLOWS. SUCH STATEMENTS REFLECT THE COMPANY'S CURRENT VIEWS WITH RESPECT TO FUTURE EVENTS AND FINANCIAL PERFORMANCE AND INVOLVE RISKS AND UNCERTAINTIES, INCLUDING, WITHOUT LIMITATION, GENERAL ECONOMIC AND BUSINESS CONDITIONS, CHANGES IN FOREIGN, POLITICAL, SOCIAL, AND ECONOMIC CONDITIONS, REGULATORY INITIATIVES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS, THE ABILITY TO ACHIEVE MARKET PENETRATION AND ATTRACT CUSTOMERS, AND VARIOUS OTHER MATTERS, MANY OF WHICH ARE BEYOND THE COMPANY'S CONTROL. SHOULD ONE OR MORE OF THESE RISKS OR UNCERTAINTIES OCCUR, OR SHOULD UNDERLYING ASSUMPTIONS PROVE TO BE INCORRECT, ACTUAL RESULTS MAY VARY MATERIALLY AND ADVERSELY FROM THOSE ANTICIPATED, BELIEVED, ESTIMATED, OR OTHERWISE INDICATED. CONSEQUENTLY, ALL OF THE FORWARD-LOOKING STATEMENTS MADE IN THIS FILING ARE QUALIFIED BY THESE CAUTIONARY STATEMENTS AND THERE CAN BE NO ASSURANCE OF THE ACTUAL RESULTS OR DEVELOPMENTS.

PART I

Item 1. Business.

Overview / Corporate History

CytoDyn Inc. is a Colorado corporation, with its principal business office at 1511 Third Street, Santa Fe, New Mexico, 87505; telephone: (505) 988-5520, facsimile: (800) 417-7252, and website address: www.cytodyn.com. We are a development stage biotechnology company (concept company) focused on discovering and developing a class of therapeutic monoclonal antibodies to treat Human Immunodeficiency Virus ("HIV") infection.

In October 2003, the Company (under its previous name RexRay Corporation) entered into an Acquisition Agreement with CytoDyn of New Mexico, Inc. Pursuant to the acquisition agreement, we acquired assets related to our leading drug candidate, Cytolin, including the assignment of the patent license agreement dated July 1, 1994 between CytoDyn of New Mexico, Inc. and Allen D. Allen covering three United States patents along with foreign counterpart patents which describe a method for treating HIV disease with the use of monoclonal antibodies. This includes issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057, as well as European Patent Nos. 0690725 and 1438970. In addition, Hong Kong Patent No. 1067958, Australian Patent No. 684074 and Canadian Patent No. 2156495 have been obtained as well. We also acquired the federally registered trademarks, CYTODYN (U.S. Registration No. 2095498) and CYTOLIN (U.S. Registration No. 2095497), and a related trademark symbol. The license acquired gives the Company the worldwide, exclusive right to develop, market and sell compounds disclosed by the patent claims, practice methods taught by the patent claims, and exploit specified technology related to the patents. The term of the license agreement is for the life of the patents of which the first will expire in 2013. The original expiration dates on the issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057 are 2013, 2014 and 2013, respectively.

Our Cytolin-related patents are for a murine (mouse) version of the drug. However, as discussed below in "Manufacturing and Source for Raw Materials", the Company has contracted to develop a humanized version, which we believe is necessary for any future clinical trials. All of our research on Cytolin to date has utilized the current murine (mouse) version of the drug.

Research History of Cytolin(R) Compound

Allen D. Allen, the Chairman of our Board of Directors, has been researching treatments for HIV and Acquired Immune Deficiency Syndrome ("AIDS") since 1987. He received the three United States patents along with foreign counterpart patents described above, now licensed to the Company, which cover the use of certain antibodies for treating patients with HIV. Our leading drug candidate, Cytolin, is part of a class of drugs called monoclonal antibodies or "targeted therapies", which target specific antigens on a cell or pathogen. Cytolin is based on a monoclonal antibody that binds to the cellular adhesion molecule LFA-1.

In 1993, six HIV-infected patients were treated with Cytolin. Blood and skin tests of these patients suggested that the antibody might be producing improvements in the immune function of each patient. Based on the results of this pilot study, a compassionate use trial was initiated. In this study a relatively small number of physicians in the United States administered Cytolin to their HIV-infected patients over two years. As results from this initial use became available, other physicians obtained and administered Cytolin to their patients as well. Four of the doctors using Cytolin allowed CytoDyn's predecessor to send in an independent Institutional Review Board to inspect the medical records of approximately 200 patients treated with Cytolin once or twice a month over 18 months. Data were recorded and summarized and formed part of the material presented to the FDA as an early indication of the safety and potential efficacy of Cytolin.

In 1996, the FDA approved a drug master file, designated BB-DMF#6836, for the manufacture of Cytolin at Vista Biologicals Corporation. CytoDyn of New Mexico, Inc. (a predecessor to the Company) and Vista Biologicals Corporation worked cooperatively to develop the drug master file. In accordance with the practice of the FDA, the drug master file was issued to and became the property of the entity with the capacity to manufacture the drug, in this case Vista Biologicals Corporation. By contract with Vista Biologicals Corporation, CytoDyn of New Mexico, Inc. had the exclusive right to reference the drug master file, that is, to authorize Vista Biologicals Corporation to manufacture Cytolin in accordance with the terms of the drug master file.

In 1996, the FDA also designated our investigational new drug application for Cytolin as BB-IND #6845, and subsequently approved a clinical trial. In 2002, Symbion Research International, a contract research organization, completed a Phase I a/b clinical trial of Cytolin (a Phase I trial includes the initial introduction of an investigational new drug or biologic into humans). The trial was sponsored by Amerimmune, Inc., the previous licensee of CytoDyn of New Mexico, Inc. but Symbion was never paid for its work. As a result, its work product became Symbion's. We entered into a buy-sell agreement with Symbion to purchase the Phase Ia study data in 2004. The Phase Ia study, conducted in 13 subjects suffering from HIV/AIDS, found Cytolin to be safe and well tolerated. The initial safety study supported the safety and tolerability of the drug in these dose groups. Some of the data were presented as an abstract and poster session, entitled "Phase I Study of Anti-LFA-1 Monoclonal Antibody (Cytolin in Adults with HIV Infection)" at the 9th Conference on Retroviruses and Opportunistic Infections held in Seattle, Washington on February 24-28 2002 as well as the 16th International AIDS Conference held August 2006 in Toronto, Canada. The Company then went through a period of years where legal issues delayed the progress of this treatment.

Cytolin - Current Research

Under a Clinical Trial Agreement dated September 28, 2009 (the "Clinical Trial Agreement"), in exchange for a research grant by CytoDyn, Massachusetts General Hospital (MGH) in Boston, Massachusetts agreed to conduct an ex-vivo study of Cytolin in accordance with a study protocol entitled "An observational study to determine the in-vitro immunologic and virology activity of Cytolin" (the "Study"). In addition to providing financial support for the Study, CytoDyn agreed to provide MGH with supplies of Cytolin needed for the Study. Under the Clinical Trial Agreement, Eric S. Rosenberg, M.D. is designated as the Principal Investigator for the Study.

Human subjects were recruited for the Study from Dr. Rosenberg's clinic. The Study enrolled 10 adults with early HIV infection and 10 healthy adults as the control arm, all of whom were required to participate for six months. None of the patients enrolled in the study received injections of Cytolin; rather they donated blood for examination of the effects of Cytolin on their peripheral blood mononuclear cells ("PBMCs"). In July, 2010, the enrollment is scheduled to close and the study is scheduled to begin. The Company expects the study to be completed by January 2011. The Study design and objectives are available to view at the government's website at www.clinicaltrials.gov, ID NCT01048372. The public has online access to this federal database, which describes elements of clinical trials and their status. To review public records for the Study on the government's website, enter "Cytolin" as the search term (case sensitive).

The Clinical Trial Agreement originally provided that the Company's research grant commitment for the Study would total $316,755. In May 2010, the Company agreed to provide an additional $204,000 for the Study. The added funding is designed to enable the Principal Investigator to engage additional personnel for purposes of making Study data available by December 31, 2010. The Company accordingly expects that funding requirements for the Study will total approximately $550,000. The sum of $412,000 is due to be paid by November 30, 2010, with the remaining balance of $137,500 due in January 2011.

The Study is a science-intensive research study and is not intended to function as a registrational study (see "Registrational Clinical Trials Process" below). CytoDyn contemplates that the Study will be followed by a clinical trial that may or may not be conducted at MGH or with Dr. Rosenberg as the Principal Investigator. The Company's intention is to either fund additional clinical trials and/or attempt to enter into a strategic alliance with a third party concerning its Cytolin(R) brand of S6F1 monoclonal antibodies. There is no assurance that the results of the Study will warrant further clinical trials, or that a strategic alliance for Cytolin will be available.

The Clinical Trial Agreement governs intellectual property rights that may result from the Study. Specifically, under the Clinical Trial Agreement, inventions and other patentable subject matter conceived or reduced to practice in the performance of the Study by Dr. Rosenberg, as Principal Investigator, or others acting at his direction (collectively, "MGH Investigators") belong to MGH; patentable subject matter that is jointly invented by MGH Investigators and Company personnel is jointly owned. The Clinical Trial Agreement provides that, upon conception and reduction to practice, MGH Investigators will report and assign their inventions to MGH. MGH is then obligated to advise the Company of the reported invention and to discuss with the Company whether and where patent applications should be filed to protect the invention. Under the Clinical Trial Agreement, MGH controls the prosecution of patent applications. The Company is obligated to bear all costs (including attorney's fees) associated with patent filings, including patent maintenance costs. If the Company does not provide such funding, MGH obtains the right to file and prosecute the invention at its own expense, and the right to license associated rights to other parties without obligation to the Company.

If the Company pays patent application filing costs, the Company obtains a three month period, commencing on the application filing date, to exercise an option to negotiate an exclusive license to all of MGH's rights in the invention. If the Company exercises this option, the parties are provided a further three month period to negotiate a license agreement (the "Negotiation Period"). Under the Clinical Trial Agreement, the license agreement must contain terms that are standard for agreements between universities and industry, including reasonable royalties, time-limited due diligence provisions, and indemnification and insurance requirements. If, upon expiration of the Negotiation Period, the parties have failed to agree upon license terms as specified, then MGH obtains the right to license to others all of MGH's rights in the invention, to the exclusion of the Company. In all instances, MGH reserves the right to use any invention for research, clinical and educational purposes.

The Clinical Trial Agreement also governs the parties' rights in Study data and the results of the Study ("Study Data and Results"). MGH retains ownership of all Study Data and Results, and is obligated to provide the Company with a copy of such Study Data and Results. The Clinical Trial Agreement places limits on the Company's ability to use Study Data and Results. Specifically, the Company is permitted to use Study Data and Results that disclose individually identifiable health information only for purposes of the Study or related studies that concern Cytolin or medical conditions / disease area that are the subject of the Study, however, the Company is permitted to use information that is not identifiable for any research and development purposes. These uses are further limited by the requirements that any such use comply with applicable law (including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")); and that the use is permitted by the informed consent form used with subjects in connection with the Study.

Why Cytolin is a Unique Treatment for Early HIV Infection

During the past decade, significant improvements in the antiviral "cocktails" used to treat HIV/AIDS have transformed this once fatal disease into a chronic, manageable condition. These drugs are the ingredients of Highly Active Antiretroviral Therapy (HAART), which has saved countless lives and is well tolerated by most patients, although all drugs have side effects.

The current standard of treatment allows for withholding antiviral drugs until the disease has progressed to the point where the drugs are required to maintain a patient's health, typically a period of about five years from initial infection. A chief reason for withholding treatment during the early years of HIV infection is that antiviral drugs attack the virus directly. As a result, natural selection promotes the evolution of HIV into species that are resistant to those drugs. If antiviral drugs were prescribed too early, then the virus might become resistant to those drugs, rendering them ineffective, by the time they were necessary to maintain a patient's health.

Cytolin is a monoclonal antibody administered by intravenous infusion and might expand the standard of treatment for HIV infection. In compassionate use involving hundreds of

patients treated for about two years, who were also simultaneously given access to antiretroviral drugs Cytolin appeared to be well tolerated. Subsequent uncontrolled clinical trials showed that treatment also was associated with favorable results in selected markers of disease progression.

Cytolin binds to a cellular protein highly expressed on killer cells called cytotoxic T cells or CTLs. As first shown by Zarling, et al in 1990 (Journal of Immunology, vol. 144, page 2992), the ability of these killer T cells to indiscriminately destroy CD4 T cells was a trait thought to be unique to humans. It has been known since the beginning of the AIDS pandemic that a wholesale loss of CD4 T cells is the reason why individuals infected with HIV become susceptible to the opportunistic infections and cancers that characterize AIDS. Up until the 1990s when three independent studies proposed that the killer T cells might be contributing to the wholesale loss of CD4 T cells, the actual decline remained a mystery because the virus infects relatively few CD4 T cells. Cytolin was originally thought to act to prevent the wholesale destruction of helpful CD4 T cells by blocking the unwanted activity of an HIV-infected person's own killer T cells.

Since that time, researchers have provided an alternate theory for the decline in CD4 T cells through a process of cellular suicide or cellular self-destruction called apoptosis. This process is initiated when the virus enters the target cells but does not complete its infectious cycle. In addition to CTLs, Cytolin also recognizes and binds to dendritic cells (DCs). These two types of immune cells are critical to the control of viral burden in HIV infected individuals. By binding to these cells, Cytolin appears to induce an antiviral activity that can impede infection of new cells and presumably lead to a reduction in viral burden. Since Cytolin targets a cellular protein, it potentially should not induce the expansion of resistant virus because its target protein is not under the genetic control of the virus. This is in contrast to the antiviral drugs that target viral proteins and thus allow for the generation of drug-resistant viruses. This unique mechanism of action opens the possibility that Cytolin could be administered early in the infection in order to delay the natural progression of the disease and, therefore, the time when antiviral drugs become necessary. If so, healthcare providers could treat individuals infected with HIV more quickly, rather than spending years just watching and waiting.

Monoclonal Antibodies

Cytolin is part of a class of drugs called monoclonal antibodies or "targeted therapies." Monoclonal antibodies target specific antigens on a cell or pathogen. Advances in antibody production technologies, such as high productivity cell culture has enabled manufacturers to produce antibody products more cost-effectively than 20 years ago. Many monoclonal antibodies have been approved for marketing as therapeutics by the FDA, and a large number of monoclonal antibodies are currently under investigation in clinical trials. Other companies have monoclonal antibodies in clinical research to prevent or treat HIV/AIDS that are targeted towards the virus. Our monoclonal antibody is intended to treat HIV disease by targeting a cellular protein. The fact that this protein is highly expressed in killer T cells and DCs may allow Cytolin to act through some as yet to be discovered mechanism and indirectly or directly result in the suppression of viral replication, ultimately resulting in the sparing of CD4 T cells in humans infected with HIV.

Acquisition of Advanced Genetic Technologies, Inc.

On January 30, 2007, we acquired, from Utek Corp., our subsidiary Advanced Genetic Technologies, Inc., which holds the exclusive right to develop alternative antibodies that bind to the same cellular target as Cytolin. These two monoclonal antibodies were invented at Harvard University Medical School's CBR Institute for Biomedical Research. The Company has not used these two antibodies in our research and development efforts to date but we intend to use these in future research and development efforts.

In exchange for $100,000 and seven years of prepaid license fees, the Company issued 100,000 shares of our preferred stock to Utek Corp., in exchange for 1,000 shares or 100% of Advanced Genetic Technologies, Inc., common stock. On July 2009, the preferred shares were converted into 2,356,142 shares of our common stock.

Manufacturing and Source for Raw Materials

We negotiated with a contract manufacturer, Vista Biologicals Corporation, to manufacture Cytolin suitable for use in our current ex vivo clinical trial of Cytolin at a cost of $565,000, all of which was paid by September 2008. We have also negotiated a contract with Vista Biologicals Corporation to manufacture a humanized version of Cytolin at a cost of $229,500, which the Company expects to be paid over the twelve (12) months beginning in March 2010. Although a murine (mouse) version of Cytolin was used for previous human experience that included approximately 200 patients treated for up to two years, as well as an encouraging uncontrolled Phase I(b)/II(a) study, and our current ex-vivo clinical trial, the Company understands that a fully-humanized version is necessary for the controlled clinical trials that are expected to follow the previous ones.

The Company expects to have its proprietary, fully-humanized version of Cytolin ready for bulk manufacturing in the second quarter of 2011.

Patents and Trademarks

We have a License Agreement with Allen D. Allen, the Chairman of our Board of Directors, that gives us the exclusive right to develop, market and profit from his technology worldwide. This includes issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057, as well as European Patent Nos. 0690725 and 1438970. In addition, Hong Kong Patent No. 1067958, Australian Patent No. 684074 and Canadian Patent No. 2156495 have been obtained as well. We also acquired the federally registered trademarks, CYTODYN (U.S. Registration No. 2095498) and CYTOLIN (U.S. Registration No. 2095497), and a related trademark symbol. The license acquired gives the Company the worldwide, exclusive right to develop, market and sell compounds disclosed by the patent claims, practice methods taught by the patent claims, and exploit specified technology related to the patents. The term of the license agreement is for the life of the patents of which the first will expire in 2013. The original expiration dates on the issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057 are 2013, 2014 and 2013, respectively. We estimate the costs associated with these issued patents to be approximately

$100,000 per year. The Company intends to file a new patent application covering its humanized version(s) of Cytolin during the next fiscal year if our research and development efforts warrant it.

Government Regulation

Regulation of Health Care Industry

The health care industry is highly regulated, and state and federal health care laws and regulations are applicable to certain aspects of our business. For example, there are federal and state health care laws and regulations that apply to the operation of clinical laboratories, the business relationships between health care providers and suppliers, the privacy and security of health information and the conduct of clinical research.

Regulation of Products

The design, testing, manufacture, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products is regulated by numerous third parties, including the FDA, foreign governments, independent standards auditors and our customers.

In the United States, biological products have long been subject to regulation by various federal and state agencies, primarily as to product safety, efficacy, manufacturing, advertising, labeling, import, export and safety reporting. The exercise of broad regulatory powers by the FDA through its Center for Devices and Radiological Health and its Center for Biological Evaluation and Research continues to result in increases in the amounts of testing and documentation for FDA clearance of current and new biologic products. The FDA can ban certain biological products; detain or seize adulterated or misbranded biological products; order repair, replacement or refund of these products; and require notification of health professionals and others with regard to biological products that present unreasonable risks of substantial harm to the public health. The FDA may also enjoin and restrain certain violations of the Food, Drug and Cosmetic Act, the Safe Medical Device Act or the Public Health Service Act pertaining to biological products or initiate action for criminal prosecution of such violations.

The lengthy process of seeking drug approvals, and the subsequent compliance with applicable statutes and regulations, require the expenditure of substantial resources. Failure to comply with applicable regulations can result in refusal by the FDA to approve product license applications. The FDA also has the authority to revoke previously granted product approvals.

Regulation of Laboratory Operations

Clinical laboratories that perform laboratory testing (except for research purposes only) on human subjects are subject to regulation under Clinical Laboratory Improvement Amendments (“CLIA”). CLIA regulates clinical laboratories by requiring that the laboratory be certified by the federal government, licensed by the state and comply with various operational, personnel and quality requirements intended to ensure that clinical laboratory test results are accurate, reliable and timely. State law and regulations also apply to the operation of clinical laboratories.

State Governments

Most states in which we operate have regulations that parallel federal regulations. Most states conduct periodic unannounced inspections and require licensing under such state's procedures. Our research and development activities and the manufacture and marketing of our products are and will be subject to rigorous regulations relating to product safety and efficacy by numerous governmental authorities in the United States and other countries.

Other Laws and Regulations

We are subject to various laws and regulations relating to safe working conditions, clinical, laboratory and manufacturing practices, the experimental use of animals and the use and disposal of hazardous or potentially hazardous substances, including radioactive compounds and infectious disease agents, used in connection with our research. The extent of government regulation applying to our business that might result from any legislative or administrative action cannot be accurately predicted.

Environmental

We are subject to a variety of federal, state and local environmental protection measures. We believe that our operations comply in all material respects with applicable environmental laws and regulations. Our compliance with these regulations did not have during the past year and is not expected to have a material effect upon our capital expenditures, cash flows, earnings or competitive position.

Registrational Clinical Trials Process

Described below is the traditional registrational drug development track. Under the Company's current business plan, much of this initial work may be sponsored and conducted by the MGH at some point in the future. Once these trials have been initiated, the Company could enter into a strategic alliance with a larger pharmaceutical company after development has progressed to a certain point. While there can be no guarantee that this will occur in our case, if it does, then our larger partner would usually be responsible for dealing with the FDA.

Phase I

Phase I includes the initial introduction of an investigational new drug or biologic into humans. These studies are closely monitored and may be conducted in patients, but are usually conducted in a small number of healthy volunteer subjects. These studies are designed to determine the metabolic and pharmacologic actions of the investigational product in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness. During Phase I, sufficient information about the investigational product's pharmacokinetics and pharmacological effects are obtained to permit the design of well-controlled, scientifically valid, Phase II studies.

Phase II

Phase II includes the early controlled clinical studies conducted to obtain some preliminary data on the effectiveness of the drug for a particular indication or indications in patients with the disease or condition. This phase of testing also helps determine the common short-term side effects and risks associated with the drug. Phase II studies are typically well-controlled, closely monitored, and conducted in a relatively small number of patients, usually involving several hundred people. In some cases, depending upon the need for a new drug, it may be licensed for sale in interstate commerce after a "pivotal" Phase II trial.

Phase III

Phase III studies are expanded controlled clinical studies. They are performed after preliminary evidence suggesting effectiveness of the drug has been obtained in Phase II, and are intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit/risk relationship of the drug. Phase III studies also provide an adequate basis for extrapolating the results to the general population and transmitting that information in the physician labeling. Phase III studies usually include several hundred to several thousand people.

CytoDyn may attempt to enter into a strategic alliance with a pharmaceutical marketing company after completion of the current research or after completion of any subsequent clinical trials. There is no guarantee that a strategic alliance would be achieved after any of those trials.

Subsequently, CytoDyn may fund clinical trials using venture capital or, at that time, may enter into a strategic alliance for completion of research and the subsequent marketing of Cytolin if approved. In the former case, CytoDyn Inc., will need to provide a new batch of humanized product, which we estimate will cost approximately $500,000. The Company is conducting a private placement of common shares to secure the capital needed for the follow-up study. We cannot yet estimate the cost of a follow up study at this time or whether or not the private placement will be successful.

There are many factors that can delay clinical trial benchmarks. However, the Company hopes to receive the results and analysis of the upcoming clinical trial during 2011.

Benchmark	Some Factors That Can Cause Delays +
	Manufacturing Delays
	Documentation Delays
Patient Outreach	IRB Delays
	Delays in Regulatory Review or Approval
	Force Majeure

Dose First Patient	Fill and Finish Delays Slower Than Expected Patient Enrollment Force Majeure
Lock Database - Begin Statistical Analysis	Slower Than Expected Patient Enrollment Clinical Hold Laboratory Error Protocol Deviation Force Majeure
Release Final Report	Additional Stratification Required Computer Hardware or Software Malfunction Force Majeure

+ There are other factors, known and unknown, such as unexpected financial hardships, that can cause delays.

Competition

The pharmaceutical and biotechnology industries are characterized by rapidly evolving technology and intense competition. We will compete with other more established biotechnology companies which have greater financial resources than we have.

Our potential competitors include entities that develop and produce therapeutic agents for treatment of human and animal disease. These include numerous public and private academic and research organizations and pharmaceutical and biotechnology companies pursuing production of, among other things, biologics from cell cultures, genetically engineered drugs and natural and chemically synthesized drugs. Almost all of these potential competitors have substantially greater capital resources, research and development capabilities, manufacturing and marketing resources and experience than we have. Our competitors may succeed in developing potential drugs or processes that are more effective or less costly than any that may be developed by us, or that gain regulatory approval prior to our potential drugs. Worldwide, there are many antiviral drugs for treating HIV and AIDS. In seeking to manufacture, distribute and market the various potential drugs we intend to develop, we face competition from established pharmaceutical companies. All of our potential competitors in this field have considerably greater financial and personnel resources than we possess. We also expect that the number of our competitors and potential competitors will increase as more potential drugs receive commercial marketing approvals from the FDA or analogous foreign regulatory agencies. Any of these competitors may be more successful than us in manufacturing, marketing and distributing our potential drugs.

Research and Development Costs

Our sponsored research and development expenses were $328,775, $468,700, and $1,748,703 in fiscal 2010, fiscal 2009 and for the period October 28, 2003 through May 31, 2010, respectively. We expect that research and development expenses will increase as we seek to expand development of our current and future product pipeline.

Employees

We have four full time employees and a varying number of consultants engaged in management and product development. We are severely understaffed and will expand our employee force if we complete further financings. There can be no assurance we will be able to locate or secure suitable employees upon acceptable terms in the future.

Item 1A. Risk Factors.

This item is not required for smaller reporting companies.

Item 2. Properties.

Our principal offices are located at 1511 Third Street, Santa Fe, New Mexico 87505. We leased approximately 1,200 square feet for two years under a lease from September 1, 2008 until August 31, 2010 at $1,750 per month.

Item 3. Legal Proceedings.

Pursuant to that certain amendment, dated April 27, 2009, to the second amended cross-complaint, the Company was added as a defendant to the lawsuit, styled Barry v. CytoDyn of New Mexico, Inc. (Case No. BC 362909), filed in the Superior Court of the State of California, Los Angeles County. The cross-complaint alleges that we breached an agreement for legal services and that we are indebted to its attorney in connection with such legal services. The cross-complaint seeks monetary damages in the amount of $16,318 or $21,318. We believe these claims are without merit and are responding appropriately to these claims and will continue to vigorously protect our interests.

As previously disclosed, the Company entered into a settlement agreement in December, 2008 with Rex H. Lewis, Maya LLC, and others, related to certain litigation with whereby the Company was both a defendant and a plaintiff. As part of the settlement agreement, the Company agreed to pay $50,000 in January 2009 and $25,000 on or before January 14, 2010 to the plaintiff. The Company paid the $50,000 in January 2009. The remaining $25,000 was unsecured and to accrue interest at 10.0 percent per annum. The Company paid $27,500 in January 2010. As of May 31, 2010, all amounts related to this litigation have been paid and settled.

Item 4. [Removed and Reserved.]

PART II

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

Market Information

Our common stock trades on the OTC Pink Sheets under the ticker symbol CYDY.

The table below provides the high and low sales prices of our common stock for the periods indicated, as reported by the Pink Sheets quotations system:

Price Range of Outstanding Common Stock

Year Ended May 31, 2010	High	Low
First Quarter Ended August 31, 2009	$0.70	$0.21
Second Quarter Ended November 30, 2009	$1.97	$0.50
Third Quarter Ended February 28, 2010	$2.06	$1.55
Fourth Quarter Ended May 31, 2010	$2.08	$1.30
Year Ended May 31, 2009		
First Quarter Ended August 31, 2008	$1.00	$0.30
Second Quarter Ended November 30, 2008	$0.66	$0.35
Third Quarter Ended February 28, 2009	$0.49	$0.29
Fourth Quarter Ended May 31, 2009	$0.80	$0.25

Holders

The approximate number of record holders of our common stock on November 30, 2010 was 750. This includes shareholders that hold the shares in street name with Broker/Dealers.

Dividends

Holders of our common stock are entitled to receive dividends as may be declared from time to time by our Board of Directors. We have not paid any cash dividends since inception on our common stock and do not anticipate paying any in the foreseeable future. Management's current policy is to retain earnings, if any, for use in our operations and for expansion of the business.

Securities Authorized for Issuance under Equity Compensation Plans

The following table sets forth information regarding outstanding options and rights and shares reserved for future issuance under our existing equity compensation plans as of May 31, 2010.

Equity Compensation Plan Information

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	4,201,122	$ 1.58	3,398,878(1)
Equity compensation plans not approved by security holders (2)	3,459,054	$ 1.23	0
Total	7,660,176	$ 1.42	3,398,878

(1) As of May 31, 2010 we had 19,875,895 shares of common stock issued and outstanding; 3,398,878 shares currently reserved and available for future option grants under our 2004 Stock Incentive Plan.

(2) Represents warrants issued by the Company (i) in connection with previous issuances of debt and previous private placements of the Company's securities, and (ii) as consideration for certain consulting services provided to the Company, and also includes the issuance of options prior to the adoption of the 2004 Incentive Plan.

Recent Sales of Unregistered Securities

During the three months ended May 31, 2010, the Company issued 632,000 shares of common stock at $.50 per share, and realized cash proceeds of approximately $288,000. In connection with the sales, the Company relied on the exemption provided by Section 4(2) of the Securities Act of 1933, as amended (the "Act") and Rule 506 under the Act.

During the three months ended May 31, 2010 the Company issued 25,700 shares of Series B Convertible Preferred Stock ("Series B") at $5.00 per share for cash proceeds totaling approximately $128,500. The Series B is convertible into ten shares of the Company's common stock, with an effective fixed conversion price of $.50 per share. In connection with the sales, the Company relied on the exemption provided by Section 4(2) of the Act and Rule 506 under the Act.

On June 25, 2009, the Company converted 100,000 shares of preferred stock held by UTEK Corp., into 2,356,142 shares of common stock, upon request by UTEK Corp. The Company originally issued 100,000 shares of preferred stock to UTEK Corp., in connection with the acquisition from UTEK Corp., of 100% of the common stock of Advanced Genetic Technologies, Inc. The preferred shares were convertible at the current average trading price for $1,300,000 worth of common shares, which was $0.62 per share. In connection with the issuance of the shares of common stock to UTEK Corp., the Company relied upon the exemption provided by Section 4(2) of the Act and Rule 506 under the Act. UTEK Corp., is an "accredited investor", as such term is defined in Rule 501 of Regulation D.

In July 2009, the Company amended certain promissory notes into convertible notes that can be converted into shares of common stock. The notes had a fixed conversion price of $0.45 per share. In July 2009, the Company converted $146,456 of the notes and accrued interest into 325,458 shares of common stock. In connection with the issuance of the shares of common stock, the Company relied upon the exemption provided in Section 4(2) of the Act and Rule 506 under the Act.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit)	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
March 1 to March 31	0	0	0	0
April 1 to April 30	0	0	0	0
May 1 to May 31	200,000	$ 0.50	0	0

Item 6. Selected Financial Data.

This item is not required for smaller reporting companies.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the other sections of this Annual Report, including our financial statements and related notes appearing elsewhere herein. This discussion and analysis contains forward-looking statements including information about possible or assumed results of our financial conditions, operations, plans, objectives and performance that involve risk, uncertainties and assumptions. The actual results may differ materially from those anticipated and set forth in such forward-looking statements.

Results of Operations

Results of operations for the year ended May 31, 2010 compared to May 31, 2009 are as follows:

For the years ended May 31, 2010 and 2009, we had no activities that produced revenues from operations.

For the year ended May 31, 2010, we had a net loss of approximately ($3,359,000) compared to a net loss of approximately $(1,306,000) for the corresponding period in 2009. For the year ended May 31, 2010 and 2009, we incurred operating expenses consisting primarily of stock-based compensation, consulting and salaries, research and development, and amortization.

The operating expenses for the years ended May 31, 2010 and 2009 are as follows:

	2010	2009
Stock-based compensation	$1,740,000	$ 628,000
Legal and accounting	209,000	123,000
Salaries and consulting	585,000	170,000
Research and development	329,000	469,000
Amortization	4,000	9,000
Other	429,000	203,000
Total	**$3,296,000**	**$1,602,000**

Stock-based compensation increased approximately $1,112,000 primarily due to a significant grant of options in the fourth quarter of fiscal year 2010. A significant amount of the grants had immediate vesting rights, which resulted in a significant increase in stock-based compensation in the fourth quarter of 2010. Legal and accounting expenses increased approximately $86,000 as we incurred increases in audit and accounting fees relative to our efforts to become current on our Exchange Act filings (e.g. the filings of our Form 10-Ks and 10-Qs),

which was offset by a decrease in legal fees as our past litigation was settled in fiscal year 2009. Salary and consulting expenses increased approximately $415,000 in 2010 relative to 2009, as our operations increased with the our increases in cash proceeds from equity offerings, which allowed us to hire our Chief Operating Officer. Additionally, some of our employees converted from part time to full time during fiscal year 2010. The research and development expenses decreased approximately $140,000 from fiscal year 2010 to 2009. During 2009 we incurred significant expenditures related to the manufacturing of products used in our clinical trials that are currently in process. We expect research and development expenses to increase as our clinical trials progress.

Interest expense in 2010 related to convertible debt increased relative to 2009 due to fully amortizing our beneficial conversion feature associated with the conversion option related to this debt. There was no beneficial conversion features associated with convertible debt during 2009. Interest expense related to interest on notes payable decreased from fiscal year 2010 to 2009, as we paid down certain notes during 2010.

During 2009, we recognized approximately $337,000 in other income related to the extinguishment of certain debt. Given our current operating environment, we determined that the extinguishment was not extraordinary, but is not included in our operating income. The extinguishment was due to the statute of limitations expiring on a contract that created the debt.

Rescission Liability

The Company has recorded rescission liabilities for May 31, 2010 and May 31, 2009 of $3,997,000 and $1,815,000, respectively. These amounts represent the believed potential rescission liability as of the dates presented. With the filing of this Form 10-K/A, the Company is restating its previously issued financial statements for the above-mentioned periods to increase the Company's current liabilities based on the amounts of the above stated rescission liability and to correspondingly increase stockholders' deficit for the same amount. See Footnote 3 of our Financial Statements on page 42 for further information regarding these rescission liabilities.

Accrued Incentive Stock Compensation

On August 4, 2008, the Company entered into a seven year Personal Services Agreement with Nader Pourhassan (the "Contract"). The Contract provides for compensation to Dr. Pourhassan at an annual salary of $200,000. Additionally, as incentive compensation, Dr. Pourhassan's personal assistant and one additional person are to receive 50,000 common shares each of Company stock for every $500,000 in capital received by the Company through Dr. Pourhassan's efforts. As of May 31, 2010 and May 31, 2009, respectively, the Company could potentially owe the two individuals referenced above common stock in the amount of 900,000 common shares and 300,000 common shares, respectively, the cost of which is reflected as Accrued Stock Incentive Compensation at a cost of $ 1,180,000 and $171,000, respectively. We are restating our previously issued financial statements for the above-mentioned periods in the above referenced amounts to increase our liabilities of Accrued Stock Incentive Compensation and to correspondingly decrease our Common Stock to reflect the associated placement offering costs. In addition, costs of $377,079 and $266,800, which were originally reflected as consulting fees and payroll costs during fiscal years 2010 and 2009, respectively, have been reclassified to

Placement Offering Costs, offsetting Common Stock, and to correspondingly reduce our loss and deficit for those years. With the filing of this Form 10-K/A, the Company is restating its previously issued financial statements for the periods of fiscal years ended May 31, 2010 and May 31, 2009, to increase the Company's current liability to issue common stock based on the amounts provided in the Contract. However, the ultimate decision on issues relating to the Contract, as referenced above, is still being evaluated by the Company. See Footnote 3 of our Financial Statements on page 42 for further information.

Liquidity and Capital Resources.

On May 31, 2010, we had negative working capital of ($4,831,000) as compared to a negative working capital of approximately ($2,205,000) on May 31, 2009.

Cash Flows

Net cash used in operating activities was approximately $1,769,000 during fiscal year 2010, which reflects an increase of approximately $749,000 from net cash used in operating activities of approximately $1,020,000 in 2009. The increase in the net cash used in operating activities for the above periods was primarily attributable to the following:

- Our net cash flows used in operating activity losses increased approximately $749,000, with an increase in accounts payable, accrued interest payable, and accrued liabilities decreasing approximately $99,000.

The above increases were partially offset by the following:

- Stock-based compensation increased approximately $1,112,000 from 2009 to 2010.
- Debt extinguishment gain of approximately $337,000 in 2009.

There were no other significant changes in cash used in operating activities from 2009 to 2010.

There were no material changes in cash flows from investing activities from 2009 to 2010.

Cash flows provided by financing activities of approximately $2,208,000 during fiscal year 2010 increased approximately $1,006,000 from approximately $1,202,000 during 2009. The increase in cash provided by financing activities for the above periods was primarily attributable to the following:

- Cash proceeds from the sale of Series B Convertible Stock increased approximately $2,009,000.
- Proceeds from the sale of treasury stock increased approximately $559,000.

The above increases were partially offset by the following:

- Proceeds from the sale of common stock decreased approximately $923,000 from 2009 to 2010.

- Purchases of treasury stock increased approximately $436,000 from 2009 to 2010.
- Payments related to equity offering costs increased approximately $182,000 from 2009 to 2010.

There were no other significant changes in cash provided by financing activities from 2009 to 2010.

As shown in the accompanying Financial Statements, for the year ended May 31, 2010 and 2009, and since October 28, 2003 through May 31, 2010 we incurred net losses of approximately $(3,360,000) and $(1,306,000) and $(11,639,000), respectively. As of May 31, 2010, we have not emerged from the development stage. In view of these matters, our ability to continue as a going concern is dependent upon our ability to begin operations and to achieve a level of profitability. Since inception, we have financed our activities principally from the sale of public and private equity securities and proceeds from notes payable. We intend to finance our future development activities and our working capital needs largely from the sale of public equity securities with some additional funding from other traditional financing sources.

As previously mentioned, since October 28, 2003, we have financed our operations largely from the sale of common stock and preferred stock and proceeds from notes payable. From October 28, 2003 through May 31, 2010 we raised cash of approximately $4,950,000 (net of offering costs) through private placements of common and preferred stock financings and $1,537,000 through the issuance related party notes payable and convertible notes. Additionally, the Company has raised approximately $612,000 from the issuance of common stock and preferred stock in conjunction with certain acquisitions in prior years. In April 2010, our shareholders voted to amend our Articles of Incorporation to increase the number of authorized shares of common stock to 100,000,000 shares; accordingly, we intend to continue to finance our operations through the sale of our shares.

Since October 28, 2003 through May 31, 2010, we have incurred approximately $1,749,000 of research and development costs and approximately $11,141,000 in operating expenses. We have incurred significant net losses and negative cash flows from operations since our inception. As of May 31, 2010, we had an accumulated deficit of approximately $13,241,000 and negative working capital of approximately $4,831,000.

We anticipate that cash used in product development and operations, especially in the marketing, production and sale of our products will increase significantly in the future. We currently do not have any significant material commitments related to capital expenditures. As described above, we do have material commitments related to our current Study (as defined above) of our product with MGH, and our contracts with Vista Biologicals Corporation.

Going Concern

We will require additional funding in order to continue with research and development efforts.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As shown in the accompanying financial statements, the Company is currently in the development stage with losses for all periods presented. As of May 31, 2010 these factors, among others, raise substantial doubt about the Company's ability to continue as a going concern.

The financial statements do not include any adjustments relating to the recoverability and classification of liabilities that might be necessary should the Company be unable to continue as a going concern. The Company's continuation as a going concern is dependent upon its ability to obtain additional operating capital, complete development of its medical treatments, obtain FDA approval, outsource manufacturing of the treatments, and ultimately to attain profitability. The Company intends to seek additional funding through equity offerings or licensing agreements to fund its business plan. There is no assurance that the Company will be successful in these endeavors.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

We believe that the following critical policies affect our more significant judgments and estimates used in preparation of our financial statements.

We use the Black-Scholes option pricing model to estimate the fair value of stock-based awards on the date of grant utilizing certain assumptions that require judgments and estimates. These assumptions include estimates for volatility, expected term, and risk-free interest rates in determining the fair value of the stock-based awards.

We issue common stock to consultants for various services. Costs for these transactions are measured at the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more readily measurable. This determination requires judgment in terms of the consideration being measured.

We estimated an amount that is a probable indicator of our rescission liability and will record rescission liabilities for May 31, 2010 and May 31, 2009 of $3,997,000 and $1,815,000, respectively. These amounts represent the believed potential rescission liability as of the dates

presented. With the filing of this Form 10-K/A, we are restating our previously issued financial statements for the above-mentioned periods to increase our current liabilities based on the amounts of the above stated rescission liability and to correspondingly increase stockholders' deficit for the same amount. See Footnote 3 of our Financial Statements on page 42 for further information.

The Company is evaluating its obligations under a seven year Personal Services Agreement dated August 4, 2008 (the "Contract"), with Nader Pourhassan pursuant to which compensation was paid or accrued in view of the subsequent determination that these payments violated applicable securities laws. Such violations gave rise to the Company's rescission obligation reflected in the Financial Statements. It is unclear at this point whether the Company has any defenses to payment, whether the Company has any rights to recover payments made to Mr. Pourhassan or others at his direction or as contemplated in the Contract (including payments in the form of securities); or whether, even if the Company does have such rights, Mr. Pourhassan (and perhaps others) would have certain equitable remedies that would entitle Mr. Pourhassan (and perhaps others) to set off against the Company's rights or would obligate the Company to make compensatory payments for services performed by Mr. Pourhassan (and others under his direction).

The Contract provides for compensation to Dr. Pourhassan at an annual salary of $200,000. Additionally, as incentive compensation, Dr. Pourhassan's personal assistant and one additional person are to receive 50,000 common shares each of Company stock for every $500,000 in capital received by the Company through Dr. Pourhassan's efforts. As of May 31, 2010 and May 31, 2009, respectively, the Company could potentially owe the two individuals referenced above common stock in the amount of 900,000 common shares and 300,000 common shares, respectively, the cost of which is reflected as Accrued Stock Incentive Compensation at a cost of $ 1,180,000 and $ 171,000, respectively. We are restating our previously issued financial statements for the above-mentioned periods in the above referenced amounts to increase our liabilities of Accrued Stock Incentive Compensation and to correspondingly decrease our Common Stock to reflect the associated placement offering costs. In addition, costs of $377,079 and $266,800, which were originally reflected as consulting fees and payroll costs during fiscal years 2010 and 2009, respectively, have been reclassified to Placement Offering Costs, offsetting Common Stock, and to correspondingly reduce our loss and deficit for those years. With the filing of this Form 10-K/A, the Company is restating its previously issued financial statements for the periods of fiscal years ended May 31, 2010 and May 31, 2009, to increase the Company's current liability to issue common stock based on the amounts provided in the Contract. However, the ultimate obligations or rights under the Contract is still being evaluated by the Company. See Footnote 3 of our Financial Statements on page 42 for further information.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

This item is not required for smaller reporting companies.

Item 8. Financial Statements and Supplementary Data

CYTODYN INC.
(A DEVELOPMENT STAGE COMPANY)

CONTENTS PAGE #

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders
CytoDyn Inc. (A Development Stage Company)
Lutz, Florida

We have audited the accompanying consolidated balance sheets of CytoDyn Inc. (a development stage company) as of May 31, 2010 and 2009 and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for the years then ended and the period from October 28, 2003 through May 31, 2010. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of CytoDyn Inc. as of May 31, 2010 and 2009 and the results of its operations and its cash flows for the years then ended and the period from October 28, 2003 through May 31, 2010 in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company incurred a net loss of ($3,359,865) for the year ended May 31, 2010 and has an accumulated deficit of ($13,240,606) from the date of inception through May 31, 2010, which raises a substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As discussed in Note 3 to the consolidated financial statements, the Company has restated its financial statements as of May 31, 2010 and 2009 and for the periods then ended.

/s/ Pender Newkirk & Company LLP
Pender Newkirk & Company LLP
Certified Public Accountants
Tampa, Florida
December 3, 2010 except for Note 3 and Note 11,
for which the date is August 4, 2011

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CytoDyn Inc.
(A Development Stage Company)
Consolidated Balance Sheets

	May 31, 2010 (Restated)	2009 (Restated)
Assets		
Current assets:		
Cash	$ 700,497	$ 265,520
Prepaid Insurance	12,127	—
Prepaid License Fees	7,500	7,500
Total current assets	720,124	273,020
Furniture and equipment, net	3,549	1,963
Intangible assets, net	—	161
Other assets	23,975	29,600
	$ 747,648	$ 304,744
Liabilities and Stockholders' Deficit		
Current Liabilities:		
Accounts payable	$ 178,956	$ 269,870
Accrued liabilities	15,209	49,424
Accrued stock incentive compensation	1,180,000	171,000
Short-term portion of commitment and contingencies	—	25,000
Indebtedness to related parties	153,985	—
Short-term portion of accrued interest payable	25,575	80,329
Short-term portion of notes payable	—	67,500
Stock rescission liability	3,997,000	1,815,000
Total current liabilities	5,550,725	2,478,123
Other liabilities:		
Accrued salaries - related party	229,500	229,500
Notes payable - less current portion	—	70,500
Convertible notes payable, net	6,937	21,937
Indebtedness to related parties	—	190,985
Total liabilities	5,787,162	2,991,045
Shareholders' (deficit):		
Series A Convertible Preferred Stock; no par value; 5,000,000 shares authorized; -0- and 100,000 shares issued and outstanding at May 31, 2010 and 2009, respectively	—	167,500
Series B Convertible Preferred stock; no par value; 400,000 shares authorized; 400,000 and -0- shares issued and outstanding at May 31, 2010 and 2009, respectively	1,127,005	—
Common stock, no par value; 100,000,000 shares authorized; 20,075,895 and 16,221,315 shares issued and outstanding at May 31, 2010 and 2009, respectively	6,448,925	5,847,787
Additional paid-in capital	4,703,875	2,994,153
Common and preferred stock subject to rescission	(3,997,000)	(1,815,000)
Treasury Stock at cost; 200,000 and -0- shares held at May 31, 2010 and 2009, respectively	(100,000)	—
Additional paid-in capital - treasury stock	67,575	—
Prepaid stock services	(49,288)	—
Accumulated deficit on unrelated dormant Operations	(1,601,912)	(1,601,912)
Deficit accumulated during development stage	(11,638,694)	(8,278,829)
Total shareholders' (deficit)	(5,039,514)	(2,686,301)
	$ 747,648	$ 304,744

See accompanying notes to consolidated financial statements.

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CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Operations

	Year Ended May 31,		October 28, 2003 through May 31, 2010
	2010 (Restated)	2009 (Restated)	(Restated)
Operating expenses:			
General and administrative	$ 2,923,736	$ 1,024,973	$ 8,481,754
Amortization / depreciation	2,077	9,392	177,969
Research and development	328,775	468,700	1,748,703
Legal fees	41,795	99,385	732,569
Total operating expenses	3,296,383	1,602,450	11,140,995
Operating loss	(3,296,383)	(1,602,450)	(11,140,995)
Interest income	—	—	1,627
Extinguishment of debt	—	337,342	337,342
Interest expense:			
Interest on convertible debt	(38,604)	—	(734,863)
Interest on notes payable	(24,878)	(40,896)	(101,805)
Loss before income taxes	(3,359,865)	(1,306,004)	(11,638,694)
Income tax provision	—	—	—
Net loss	$ (3,359,865)	$ (1,306,004)	$ (11,638,694)
Convertible preferred Stock dividends	(6,000,000)	—	(6,000,000)
Net loss applicable to Common shareholders	$ (9,359,865)	$ (1,306,004)	$ (17,638,694)
Basic and diluted loss per share applicable to common shareholders	$ (0.49)	$ (0.09)	$ (1.52)
Basic and diluted weighted average common shares outstanding	18,999,234	14,210,631	11,641,851

See accompanying notes to consolidated financial statements.

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CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			Subject to
	Shares	Amount	Shares	Amount	APIC	Rescission
Balance at October 28, 2003, following recapitalization	—	—	6,252,640	$1,425,334	$23,502	—
February through April 2004, sale of common stock less offering costs of $54,000 ($0.30 per share)	—	—	1,800,000	486,000	—	—
February 2004, shares issued to former officer as payment for working capital advance ($.30 per share)	—	—	16,667	5,000	—	—
Net loss at year ended May 31, 2004	—	—	—	—	—	—
Balance at May 31, 2004	—	—	8,069,307	1,916,334	23,502	—
July 2004, capital contribution by an officer	—	—	—	—	512	—
November 2004, common stock warrants granted	—	—	—	—	11,928	—
February 2005, capital contribution by an officer	—	—	—	—	5,000	—
Net loss at year ended May 31, 2005	—	—	—	—	—	—
Balance at May 31, 2005	—	—	8,069,307	1,916,334	40,942	—

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Treasury Stock			Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
	Shares	Amount	APIC				
Balance at October 28, 2003, following recapitalization	—	—	—	—	$(1,594,042)	—	$(145,206)
February through April 2004, sale of common stock less offering costs of $54,000 ($0.30 per share)	—	—	—	—	—	—	486,000
February 2004, shares issued to former officer as payment for working capital advance ($.30 per share)	—	—	—	—	—	—	5,000
Net loss at year ended May 31, 2004	—	—	—	—	(7,870)	(338,044)	(345,914)
Balance at May 31, 2004	—	—	—	—	(1,601,912)	(338,044)	(120)
July 2004, capital contribution by an officer	—	—	—	—	—	—	512
November 2004, common stock warrants granted	—	—	—	—	—	—	11,928
February 2005, capital contribution by an officer	—	—	—	—	—	—	5,000
Net loss at year ended May 31, 2005	—	—	—	—	—	(777,083)	(777,083)
Balance at May 31, 2005	—	—	—	—	(1,601,912)	(1,115,127)	(759,763)

See accompanying notes to consolidated financial statements.

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			Subject to
	Shares	Amount	Shares	Amount	APIC	Rescission
June through July 2005, sale of common stock less offering costs of $27,867 ($.75/share)	—	—	289,890	189,550	—	—
August 2005, common shares issued to extinguish promissory notes payable and related interest ($.75/share)	—	—	160,110	120,082	—	—
May 2006, common shares issued to extinguish convertible debt	—	—	350,000	437,500	—	—
November 2005, 94,500 warrants exercised ($.30/share)	—	—	94,500	28,350	—	—
January through April 2006, common shares issued for prepaid services	—	—	183,857	370,750	—	—
Amortization of prepaid stock services	—	—	—	—	—	—
January through June 2006, warrants issued with convertible debt	—	—	—	—	274,950	—
January through May 2006, beneficial conversion feature of convertible debt	—	—	—	—	234,550	—
March through May 2006, stock options granted to consultants	—	—	—	—	687,726	—

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Treasury Stock						
	Shares	Amount	APIC	Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
June through July 2005, sale of common stock less offering costs of $27,867 ($.75/share)	—	—	—	—	—	—	189,550
August 2005, common shares issued to extinguish promissory notes payable and related interest ($.75/share)	—	—	—	—	—	—	120,082
May 2006, common shares issued to extinguish convertible debt	—	—	—	—	—	—	437,500
November 2005, 94,500 warrants exercised ($.30/share)	—	—	—	—	—	—	28,350
January through April 2006, common shares issued for prepaid services	—	—	—	(370,750)	—	—	—
Amortization of prepaid stock services	—	—	—	103,690	—	—	103,690
January through June 2006, warrants issued with convertible debt	—	—	—	—	—	—	274,950
January through May 2006, beneficial conversion feature of convertible debt	—	—	—	—	—	—	234,550
March through May 2006, stock options granted to consultants	—	—	—	—	—	—	687,726

See accompanying notes to consolidated financial statements.

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CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			
	Shares	Amount	Shares	Amount	APIC	Subject to Rescission
March 2006, stock options issued to extinguish debt	—	—	—	—	86,341	—
Net loss at year ended May 31, 2006	—	—	—	—	—	—
Balance at May 31, 2006	—	—	9,147,664	3,062,566	1,324,509	—
Common stock issued to extinguish convertible debt	—	—	119,600	149,500	—	—
Common stock issued for AITI acquisition	—	—	2,000,000	934,399	—	—
Amortization of prepaid stock services	—	—	—	—	—	—
Common stock payable for prepaid services	—	—	—	—	120,000	—
Stock-based compensation	—	—	—	—	535,984	—
Warrants issued with convertible debt	—	—	—	—	92,500	—
Common stock issued for services	—	—	30,000	26,400	—	—
Preferred shares issued AGTI	100,000	167,500	—	—	—	—
Net loss, May 31, 2007	—	—	—	—	—	—
Balance at May 31, 2007	100,000	167,500	11,297,264	4,172,865	2,072,993	—

CytoDyn Inc.
(A Development Stage Company)
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Period October 28, 2003 through May 31, 2010
Restated

	Treasury Stock						
	Shares	Amount	APIC	Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
March 2006, stock options issued to extinguish debt	—	—	—	—	—	—	86,341
Net loss at year ended May 31, 2006	—	—	—	—	—	(2,053,944)	(2,053,944)
Balance at May 31, 2006	—	—	—	(267,060)	(1,601,912)	(3,169,071)	(650,968)
Common stock issued to extinguish convertible debt	—	—	—	—	—	—	149,500
Common stock issued for AITI acquisition	—	—	—	—	—	—	934,399
Amortization of prepaid stock services	—	—	—	267,060	—	—	267,060
Common stock payable for prepaid services	—	—	—	(106,521)	—	—	13,479
Stock-based compensation	—	—	—	—	—	—	535,984
Warrants issued with convertible debt	—	—	—	—	—	—	92,500
Common stock issued for services	—	—	—	—	—	—	26,400
Preferred shares issued AGTI	—	—	—	—	—	—	167,500
Net loss, May 31, 2007	—	—	—	—	—	(2,610,070)	(2,610,070)
Balance at May 31, 2007	—	—	—	(106,521)	(1,601,912)	(5,779,141)	(1,074,216)

See accompanying notes to consolidated financial statements.

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			
	Shares	Amount	Shares	Amount	Amount	Subject to Rescission
Amortization of prepaid stock for service	—	—	—	—	—	—
Stock based compensation	—	—	—	—	461,602	—
Common stock issued to extinguish convertible debt	—	—	750,000	75,000	—	—
Rescission of common stock issued for services	—	—	(142,857)	(100,000)	—	—
Original issue discount convertible debt with warrants	—	—	—	—	3,662	—
Original issue discount convertible debt with beneficial conversion feature	—	—	—	—	75,000	—
Stock issued for cash ($.50/share)	—	—	642,000	321,000	—	(321,000)
Net loss	—	—	—	—	—	—
Balance at May 31, 2008	100,000	$167,500	12,546,407	$4,468,865	$2,613,257	(321,000)

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
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Restated

	Treasury Stock						
	Shares	Amount	APIC	Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
Amortization of prepaid stock for service	—	—	—	106,521	—	—	106,521
Stock based compensation	—	—	—	—	—	—	461,602
Common stock issued to extinguish convertible debt	—	—	—	—	—	—	75,000
Rescission of common stock issued for services	—	—	—	—	—	—	(100,000)
Original issue discount convertible debt with warrants	—	—	—	—	—	—	3,662
Original issue discount convertible debt with beneficial conversion feature	—	—	—	—	—	—	75,000
Stock issued for cash ($.50/share)	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	(1,193,684)	(1,193,684)
Balance at May 31, 2008	—	—	—	—	$(1,601,912)	$(6,972,825)	$(1,646,115)

See accompanying notes to consolidated financial statements.

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			
	Shares	Amount	Shares	Amount	APIC	Subject to Rescission
Stock issued for cash ($.50/share) Less offering costs of $420,146	—	—	3,023,308	$1,073,854	—	(1,494,000)
Stock issued for services ($.50/share)	—	—	388,200	194,100	—	—
Stock issued for services ($.37/share)	—	—	150,000	55,500	—	—
Stock based compensation	—	—	—	—	371,996	—
Stock issued in payment of accounts payable, ($.50/share)	—	—	98,000	49,000	—	—
Stock issued for services ($.42/share)	—	—	15,400	6,468	—	—
Capital contribution	—	—	—	—	8,900	—
Net loss ended May 31, 2009	—	—	—	—	—	—
Balance at May 31, 2009	100,000	$167,500	16,221,315	$5,847,787	$2,994,153	$(1,815,000)
Stock issued for cash ($.50/share) less offering costs of $51,892	—	—	236,400	66,308	—	(118,200)
Stock issued for cash ($.50/share) less offering costs of $167,828	—	—	632,000	150,672	—	(318,500)
Stock issued for cash ($.50/share) less offering costs of $82,088	—	—	304,580	70,202	—	(152,290)
Conversion of debt to Common stock ($0.45/share)	—	—	325,458	146,456	—	—

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	Treasury Stock						
	Shares	Amount	APIC	Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
Stock issued for cash ($.50/share) Less offering costs of $437,800	—	—	—	—	—	—	$ (420,146)
Stock issued for services ($.50/share)	—	—	—	—	—	—	194,100
Stock issued for services ($.37/share)	—	—	—	—	—	—	55,500
Stock based compensation	—	—	—	—	—	—	371,996
Stock issued in payment of accounts payable, ($.50/share)	—	—	—	—	—	—	49,000
Stock issued for services ($.42/share)	—	—	—	—	—	—	6,468
Capital contribution	—	—	—	—	—	—	8,900
Net loss ended May 31, 2009	—	—	—	—	—	(1,306,004)	(1,306,004)
Balance at May 31, 2009	—	—	—	—	$(1,601,912)	$(8,278,829)	$(2,686,301)
Stock issued for cash ($.50/share) less offering costs of $51,892	—	—	—	—	—	—	(51,892)
Stock issued for cash ($.50/share) less offering costs of $167,828	—	—	—	—	—	—	(167,828)
Stock issued for cash ($.50/share) less offering costs of $82,088	—	—	—	—	—	—	(82,088)
Conversion of debt to Common stock ($0.45/share)	—	—	—	—	—	—	146,456

See accompanying notes to consolidated financial statements.

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Preferred Stock		Common Stock			
	Shares	Amount	Shares	Amount	APIC	Subject to Rescission
Conversion of preferred stock to common stock	(100,000)	(167,500)	2,356,142	167,500	—	—
Stock-based compensation	—	—	—	—	1,671,118	—
Original issue discount convertible debt with beneficial conversion feature	—	—	—	—	38,604	—
Expiration of Rescission Liabilities	—	—	—	—	—	975,200
Repurchase of common stock ($.28/share)	—	—	—	—	—	—
Repurchase of common stock ($.50/share) less offering costs of $121,609	—	—	—	—	—	—
Stock issued for cash ($.50/share)	—	—	—	—	—	(277,000)
Stock issued for services ($1.45/share)	—	—	—	—	—	—
Stock issued for cash ($.50/share) less offering costs of $152,317	—	—	—	—	—	(282,210)
Amortization of prepaid stock for services	—	—	—	—	—	—
Series B Convertible Preferred stock issued for cash ($5.00/share) less offering costs of $881,995	400,000	1,127,005	—	—	—	(2,009,000)
Net Loss, ended May 31, 2010	—	—	—	—	—	—
Balance at May 31, 2010	400,000	$1,127,005	20,075,895	6,448,925	$4,703,875	(3,997,000)

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Changes in Shareholders' Equity (Deficit)
Period October 28, 2003 through May 31, 2010
Restated

	Treasury Stock			Stock for Prepaid Services	Accumulated Deficit	Deficit Accumulated During Development Stage	Total
	Shares	Amount	APIC				
Conversion of preferred stock to common stock	—	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	1,671,118
Original issue discount convertible debt with beneficial conversion feature	—	—	—	—	—	—	38,604
Expiration of Rescission Liabilities	—	—	—	—	—	—	975,200
Repurchase of common stock ($.28/share)	(1,200,000)	(336,000)	—	—	—	—	(336,000)
Repurchase of common stock ($.50/share)	(200,000)	(100,000)	—	—	—	—	(100,000)
Stock issued for cash ($.50/share) less offering costs of $121,609	550,000	154,000	1,391	—	—	—	(121,609)
Stock issued for services ($1.45/share)	81,580	22,842	95,449	(118,291)	—	—	—
Stock issued for cash ($.50/share) less offering costs of $152,317	568,420	159,158	(29,265)	—	—	—	(152,317)
Amortization of prepaid stock for services	—	—	—	69,003	—	—	69,003
Series B Convertible Preferred stock issued for cash ($5.00/share) less offering costs of $881,995	—	—	—	—	—	—	(881,995)
Net Loss, ended May 31, 2010	—	—	—	—	—	(3,359,865)	(3,359,865)
Balance at May 31, 2010	(200,000)	$(100,000)	$ 67,575	$ (49,288)	$(1,601,912)	$(11,638,694)	$(5,039,514)

See accompanying notes to consolidated financial statements.

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Cash Flows

	Year Ended May 31,		October 28, 2003 through May 31, 2010
	2010 (Restated)	2009 (Restated)	(Restated)
Cash flows from operating activities			
Net loss	$(3,359,865)	$(1,306,004)	$(11,638,694)
Adjustments to reconcile net loss to net cash used by operating activities:			
Amortization / depreciation	2,077	9,392	177,969
Amortization of original issue discount	38,604	1,010	717,202
Extinguishment of debt	—	(337,342)	(337,342)
Purchased in-process research and development	—	—	274,399
Stock-based compensation	1,740,121	628,064	4,534,021
Changes in current assets and liabilities:			
Accrued legal settlement	(25,000)	—	—
Decrease in prepaid expenses	(12,127)	36,482	(19,627)
Increase in other assets	5,786	7,640	(23,975)
Increase in accounts payable, accrued	(158,927)	(59,447)	519,196
Interest and accrued liabilities			
Net cash used in operating activities	(1,769,331)	(1,020,205)	(5,796,851)
Cash flows from investing activities:			
Furniture and equipment purchases	(3,663)	(1,951)	(16,378)
	(3,663)	(1,951)	(16,378)
Cash flows from financing activities:			
Capital contributions by executive	—	8,900	14,412
Proceeds from notes payable to related parties	3,000	—	705,649
Payments on notes payable to related parties	(40,000)	(44,513)	(160,498)
Proceeds from notes payable issued to individuals	—	—	145,000
Payments on notes payable issued to individuals	(27,500)	(7,000)	(34,500)
Proceeds from convertible notes payable	—	—	686,000
Proceeds from the sale of common stock	588,990	1,511,654	3,179,061
Proceeds from Series B preferred stock	2,009,000	—	2,009,000
Purchase of treasury stock	(436,000)	—	(436,000)
Proceeds from sale of treasury stock	559,210	—	559,210
Payments for offering costs	(448,729)	(266,800)	(797,396)
Proceeds from issuance of stock for AITI acquisition	—	—	512,200
Proceeds from issuance of stock for AGTI acquisition	—	—	100,000
Proceeds from exercise of warrants	—	—	28,350
Net cash provided by financing activities	2,207,971	1,202,241	6,510,488
Net change in cash	434,977	180,085	697,259
Cash, beginning of period	265,520	85,435	3,238
Cash, end of period	$ 700,497	$ 265,520	$ 700,497

See accompanying notes to consolidated financial statements

CytoDyn Inc.
(A Development Stage Company)
Consolidated Statements of Cash Flows

	Year Ended May 31,		October 28, 2003 through May 31, 2010
	2010 (Restated)	2009 (Restated)	(Restated)
Supplemental disclosure of cash flow information:			
Cash paid during the period for:			
Income taxes	$ —	$ —	$ —
Interest	$ —	$ —	$ 3,036
Non-cash investing and financing transactions:			
Net assets acquired in exchange for common stock in CytoDyn/Rexray business combination	$ —	$ —	$ 7,542
Common stock issued to former officer to repay working capital advance	$ —	$ —	$ 5,000
Common stock issued for convertible debt	$ —	$ —	$ 662,000
Common stock issued for debt	$ 125,500	$ —	$ 245,582
Common stock issued for accrued interest payable	$ 20,956	—	$ 20,956
Options to purchase common stock issued for debt	$ —	$ —	$ 62,341
Original issue discount and intrinsic value of beneficial conversion feature related to debt issued with warrants	$ 38,604	$ —	$ 719,266
Common stock issued for preferred stock	$ 167,500	$ —	$ 167,500
Treasury stock issued for prepaid services	$ 118,291	$ —	$ 118,291
Common stock issued on payment of accounts payable	$ —	$ 49,000	$ 49,000
Preferred and common stock subject to its rescission	$3,997,000	$1,815,000	$3,997,000
Accrued stock incentive	$1,180,000	$ 171,000	$1,180,000

See accompanying notes to consolidated financial statements.

CYTODYN INC.
(A DEVELOPMENT STAGE COMPANY)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1 - Organization

CytoDyn Inc. (the "Company") was incorporated under the laws of Colorado on May 2, 2002 under the name Rexray Corporation ("Rexray"). In October 2003, the Company (under its previous name RexRay Corporation) entered into an Acquisition Agreement with CytoDyn of New Mexico, Inc. Pursuant to the acquisition agreement, we acquired assets related to our leading drug candidate, Cytolin, including the assignment of the patent license agreement dated July 1, 1994 between CytoDyn of New Mexico, Inc. and Allen D. Allen covering three United States patents along with foreign counterpart patents which describe a method for treating HIV disease with the use of monoclonal antibodies. This includes issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057, as well as European Patent Nos. 0690725 and 1438970. In addition, Hong Kong Patent No. 1067958, Australian Patent No. 684074 and Canadian Patent No. 2156495 have been obtained as well. We also acquired the federally registered trademarks, CYTODYN (U.S. Registration No. 2095498) and CYTOLIN (U.S. Registration No. 2095497), and a related trademark symbol. The license acquired gives the Company the worldwide, exclusive right to develop, market and sell compounds disclosed by the patent claims, practice methods taught by the patent claims, and exploit specified technology related to the patents. The term of the license agreement is for the life of the patents of which the first will expire in 2013. The original expiration dates on the issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057 are 2013, 2014 and 2013, respectively. As consideration for the intellectual property and trademarks we paid CytoDyn of New Mexico $10,000 in cash and issued 5,362,640 post-split shares of common stock to CytoDyn of New Mexico.

The Company entered the development stage effective October 28, 2003 upon the reverse merger and recapitalization of the Company and follows Financial Standard Accounting Codification No. 915, Development Stage Entities.

Advanced Influenza Technologies, Inc. ("AITI") was incorporated under the laws of Florida on June 9, 2006 pursuant to an acquisition during 2006. This entity was administratively dissolved on September 25, 2009.

Advanced Genetic Technologies, Inc. ("AGTI") was incorporated under the laws of Florida on December 18, 2006 pursuant to an acquisition during 2006.

CytoDyn Inc., discovered and is developing a class of therapeutic monoclonal antibodies to address significant unmet medical needs in the areas of HIV and AIDS.

2 - Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of CytoDyn Inc., and its wholly owned subsidiaries; AITI and AIGI. All intercompany transactions and balances are eliminated in consolidation.

Going Concern

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As shown in the accompanying consolidated financial statements, the Company is currently in the development stage with losses for all periods presented. As of August 4, 2011 these factors, among others, raise substantial doubt about the Company's ability to continue as a going concern.

The consolidated financial statements do not include any adjustments relating to the recoverability of assets and classification of liabilities that might be necessary should the Company be unable to continue as a going concern. The Company's continuation as a going concern is dependent upon its ability to obtain additional operating capital, complete development of its medical treatment, obtain FDA approval, outsource manufacturing of the treatment, and ultimately to attain profitability. The Company intends to seek additional funding through equity offerings to fund its business plan. There is no assurance that the Company will be successful in these endeavors.

CYTODYN INC.
(A DEVELOPMENT STAGE COMPANY)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Use of Estimates

The preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments with original maturities of three months or less when acquired to be cash equivalents. The Company had no cash equivalents as of May 31, 2010 or May 31, 2009. The Company maintains its cash in bank deposit accounts, which at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts.

Furniture and Equipment

Furniture and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets, generally three to seven years. Maintenance and repairs are charged to expense as incurred and major improvements or betterments are capitalized. Gains or losses on sales or retirements are included in the consolidated statements of operations in the year of disposition.

Impairment of Long-Lived Assets

The Company evaluates the carrying value of long-lived assets under U.S. GAAP, which requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted future cash flows estimated to be generated by those assets are less than the assets' carrying amount. If such assets are impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying value or fair value, less costs to sell. There were no impairment charges for years ended May 31, 2010 and 2009, and for the period October 28, 2003 to May 31, 2010.

Research and Development

Research and development costs are expensed as incurred.

Financial Instruments

At May 31, 2010 and May 31, 2009, the carrying value of the Company's financial instruments approximate fair value due to the short-term maturity of the instruments. The Company's notes payable have market rates of interest, and accordingly, the carrying values of the notes approximates the fair value.

Stock-Based Compensation

U.S. GAAP requires companies to measure the cost of employee services received in exchange for the award of equity instruments based on the fair value of the award at the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award (requisite service period). U.S. GAAP provides for two transition methods. The "modified prospective" method requires that share-based compensation expense be recorded for any employee options granted after the adoption date and for the unvested portion of any employee options outstanding as of the adoption date. The "modified retrospective" method requires that, beginning upon adoption, all prior periods presented be restated to reflect the impact of share-based compensation expense consistent with the pro forma disclosures previously required under U.S. GAAP. The Company adopted the modified prospective method, and as a result, was not required to restate its financial results for prior periods. Prior to June 1, 2006, the Company recognized compensation expense to the extent of employee or director services rendered based on the intrinsic value of stock options granted under the plan.

CYTODYN INC.
(A DEVELOPMENT STAGE COMPANY)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The Company accounts for common stock options, and common stock warrants granted based on the fair market value of the instrument using the Black-Scholes option pricing model utilizing certain weighted average assumptions such as expected stock price volatility, term of the options and warrants, risk-free interest rates, and expected dividend yield at the grant date. The risk-free interest rate assumption is based upon observed interest rates appropriate for the expected term of the stock options. The expected volatility is based on the historical volatility of the Company's common stock at consistent intervals. The Company has not paid any dividends on its common stock since its inception and does not anticipate paying dividends on its common stock in the foreseeable future. The computation of the expected option term is based on the "simplified method" as the Company's stock options are "plain vanilla" options and the Company has a limited history of exercise data. For common stock options and warrants with graded vesting, the Company recognizes the related compensation costs associated with these options and warrants on a straight-line basis over the requisite service period.

U.S. GAAP requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Based on limited historical experience of forfeitures, the Company estimated future unvested option forfeitures at 0% as of May 31, 2010 and May 31, 2009.

Stock for Services

The Company issues common stock and common stock options to consultants for various services. Costs for these transactions are measured at the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measurable. The value of the common stock is measured at the earlier of (i) the date at which a firm commitment for performance by the counterparty to earn the equity instruments is reached or (i) the date at which the counterparty's performance is complete.

(Loss) Per Common Share

Basic (loss) per share is computed by dividing the net loss by the weighted average number of common shares outstanding during the period. Diluted (loss) per share is computed by dividing net (loss) by the weighted average common shares and potentially dilutive common share equivalents. The effects of potential common stock equivalents are not included in computations when their effect is anti-dilutive. Because of the net losses for all periods presented, the basic and diluted weighted average shares outstanding are the same since including the additional shares would have an anti-dilutive effect on the loss per share calculation. Common stock option and warrants to purchase 7,660,176, 4,975,976 and 7,660,176 shares of common stock were not included in the computation of diluted weighted average common shares outstanding for the periods ended May 31, 2010, 2009 and for the period October 28, 2003 to May 31, 2010 respectively, as inclusion would be anti-dilutive for these periods. Additionally, 400,000 shares of Series B convertible stock can potentially convert into 4,000,000 shares of common stock.

Income Taxes

Deferred taxes are provided on the asset and liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry forwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Future tax benefits for net operating loss carryforwards are recognized to the extent that realization of these benefits is considered more likely than not. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company follows the provisions of FASB ASC 740-10 "Uncertainty in Income Taxes" (ASC 740-10), January 1, 2007. The Company has not recognized a liability as a result of the implementation of ASC 740-10. A reconciliation of the beginning and ending amount of unrecognized tax benefits has not been provided since there are no unrecognized benefits at May 31, 2010 or 2009 and since the date of adoption. The Company has not recognized interest expense or penalties as a result of the implementation of ASC 740-10. If there were an unrecognized tax benefit, the Company would recognize interest accrued related to unrecognized tax benefit in interest expense and penalties in operating expenses. The Company is subject to examination by the Internal Revenue Service and state tax authorities for tax years ending after 2006.

CYTODYN INC.
(A DEVELOPMENT STAGE COMPANY)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

3- Restatement of Consolidated Financial Statements

On March 11, 2011, on management's recommendation, the Board of Directors of the Company concluded, and Pender Newkirk & Company LLP, the Company's independent auditors agreed, that the Company's financial statements for the period ending May 31, 2010 should no longer be relied upon and should be restated. The Company's board of directors was advised by outside legal counsel that compensation the Company previously paid to an employee and certain other non-employees who were acting as unlicensed, non-exempt broker-dealers soliciting investors on behalf of the Company from April 15, 2008 to February 18, 2011 was a violation of certain state and possibly federal securities laws. As a result, such investors and potentially others have rescission or monetary claims against the Company, and the Company's liability for these potential Claims is now being properly reflected in the Company's financial statements. On March 16, 2011, the Company filed a Current Report on Form 8-K disclosing the potential rescission liability (the "Liability Disclosure"). On July 21, 2011, the Company filed a Current Report of Form 8-K disclosing its receipt of an SEC letter of inquiry and request for voluntary Assistance in discovering information related to the Liability Disclosure. We are cooperating with the SEC to provide all information required by this inquiry.

Rescission rights for individual investors and subscribers vary, based upon the laws of the states in which the investors or subscribers reside. Investments and subscriptions that are subject to rescission are recorded separately in our financial statements from stockholders' deficiency in the Company's balance sheet. As the statute of limitations expire in the respective states, such amounts for those shares are reclassified to stockholders' deficiency. Investors who have sold their shares of capital stock of the Company do not have rescission rights, but instead have claims for damages, to the extent their shares were sold at a net loss, which is determined by subtracting the purchase price plus statutory interest and costs (if any) from the sale price.

Based on the Company's ongoing investigation, assuming there are no affirmative defenses or exemptions available to the Company, investors may have up to approximately $6.4 million of federal and state Claims against the Company as of the date of filing this Form 10-K/A. These investor Claims could include approximately $5.1 million of potential state or foreign jurisdiction Claims involving approximately 17 states and five foreign jurisdictions that are not currently barred by the applicable statute of limitations or state law exemptions from broker-dealer registration requirements and these investors may also have overlapping federal Claims; the remainder could involve investors who do not have state law Claims but who may have federal rescission or damages rights if such rights can be proven to exist because of the Company's failure to disclose contingent liabilities related to the state and foreign jurisdiction Claims. The Company is continuing with its scientific and business plans in the ordinary course and is currently seeking to obtain a Letter of Credit to provide the Company the financial ability with respect to any potential Claims. As of the date of this Form 10-K/A, the Company has been notified by one Investor regarding such investor's intent to seek rescission in the amount of $10,000.

The Company estimates an amount that is a probable indicator of the rescission liability and will record rescission liabilities for May 31, 2010 and May 31, 2009 of $3,997,000 and $1,815,000, respectively. These amounts represent the believed potential rescission liability as of the dates presented. With the filing of this Form 10-K/A, the Company is restating its previously issued financial statements to increase the Company's current liabilities based on the amounts of the above stated rescission liability and to correspondingly increase stockholders' deficit for the same amount.

The Company is considering methods to offer to rescind the previous investment purchase or subscription by persons who acquired or subscribed for such investments during the period April 15, 2008 to February 18, 2011. The Company may commence a rescission offer to give each investor the opportunity to rescind or not rescind their investment (if not already sold) or subscription agreements or by certain shareholders between April 15, 2008 to February 18, 2011. Any rescission offer could address all or part of the Company's rescission liability relating to its federal and state securities laws compliance issues by allowing the investors covered by the rescission offer to rescind the underlying securities transactions and sell those back to the Company or recover funding provided with subscription agreements, as the case may be.

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The Company is evaluating its obligations under a seven year Personal Services Agreement dated August 4, 2008 (the "Contract"), with Nader Pourhassan pursuant to which compensation was paid or accrued in view of the subsequent determination that these payments violated applicable securities laws. Such violations gave rise to the Company's rescission obligation reflected in these financial statements. It is unclear at this point whether the Company has any defenses to payment, whether the Company has any rights to recover payments made to Mr. Pourhassan or others at his direction or as contemplated in the Contract (including payments in the form of securities); or whether, even if the Company does have such rights, Mr. Pourhassan (and perhaps others) would have certain equitable remedies that would entitle Mr. Pourhassan (and perhaps others) to set off against the Company's rights or would obligate the Company to make compensatory payments for services performed by Mr. Pourhassan (and others under his direction).

The Contract provides for compensation to Dr. Pourhassan at an annual salary of $200,000. Additionally, as incentive compensation, Dr. Pourhassan's personal assistant and one additional person are to receive 50,000 common shares each of Company stock for every $500,000 in capital received by the Company through Dr. Pourhassan's efforts. As of May 31, 2010 and May 31, 2009, respectively, the Company could potentially owe the two individuals referenced above common stock in the amount of 900,000 common shares and 300,000 common shares, respectively, the cost of which is reflected as Accrued Stock Incentive Compensation at a cost of $ 1,180,000 and $ 171,000, respectively. We are restating our previously issued financial statements for the above-mentioned periods in the above referenced amounts to increase our liabilities of Accrued Stock Incentive Compensation and to correspondingly decrease our Common Stock to reflect the associated placement offering costs. In addition, costs of $377,079 and $266,800, which were originally reflected as consulting fees and payroll costs during fiscal years 2010 and 2009, respectively, have been reclassified to Placement Offering Costs, offsetting Common Stock, and to correspondingly reduce our loss and deficit for those years. With the filing of this Form 10-K/A, the Company is restating its previously issued financial statements for the periods of fiscal years ended May 31, 2010 and May 31, 2009, to increase the Company's current liability to issue common stock based on the amounts provided in the Contract. However, the ultimate obligations or rights under the Contract is still being evaluated by the Company.

The following schedule illustrates the effects on the account reclassifications relating to the above restatements as of May 31, 2010 and 2009 and October 28, 2003 through May 31, 2010:

	May 31, 2010	May 31, 2009	Oct 28, 2003 through May 31, 2010
Net (loss) applicable to common Shareholders, as previously reported	$(9,736,944)	$(1,572,804)	$(18,282,573)
Adjustments to general and Administrative expenses	(377,079)	(266,800)	(643,879)
Net (loss) applicable to common Shareholders, as restated	$(9,359,865)	$(1,306,004)	$(17,638,694)
Basic and diluted (loss) per share Applicable to common shareholders, As previously reported	$ (.51)	$ (.11)	$ (1.57)
Basic and diluted (loss) per share Applicable to common shareholders, As restated	$ (.49)	$ (.09)	$ (1.52)
Current liabilities, as previously reported	$ 373,725	$ 492,123	
Stock rescission liability	3,997,000	1,815,000	
Accrued stock incentive compensation	1,180,000	171,000	
Current liabilities, as restated	$ 5,550,725	$ 2,478,123	
Total liabilities, as previously reported	$ 610,162	$ 1,005,045	
Stock rescission liability	3,997,000	1,815,000	
Accrued stock incentive compensation	1,180,000	171,000	
Total liabilities, as restated	$ 5,787,162	$ 2,991,045	
Total stockholders' equity (deficit) As previously reported	$ 137,486	$ (700,301)	
Common and preferred stock subject To rescission	(3,997,000)	(1,815,000)	
Deferred offering costs	(1,823,879)	(437,800)	
Deficit accumulated during the Development stage	643,879	266,800	
Total stockholders' (deficit) As restated	$(5,039,514)	$(2,686,301)	

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4 - Stock Options and Warrants

The Company has one stock-based equity plan at May 31, 2010. Pursuant to the 2004 Stock Incentive Plan as amended (the "Plan"), which was originally adopted by the Company's shareholders in 2005, the Company was authorized to issue options and warrants to purchase up to 7,600,000 shares of the Company's common stock. As of May 31, 2009 the Company had 3,398,878 shares available for future stock option grants under the plan.

The estimated fair value of options and warrants is determined using the Black-Scholes option valuation model with the following weighted-average assumptions for the periods ended May 31, 2010 and 2009:

	2010	2009
Risk free rate	1.67%	2.84%
Dividend yield	—	—
Volatility	125.0%	124.0%
Expected term	3 years	3 years

Net cash proceeds from the exercise of stock options and warrants were $0 and $0 for the periods ended May 31, 2010 and May 31, 2009, respectively and approximately $28,000 for the period October 28, 2003 to May 31, 2010.

Compensation expense related to stock options and warrants was approximately $1,671,000, and $372,000 for the periods ended May 31, 2010 and 2009, respectively. During 2010 and 2009, the Company granted 2,566,000 and 205,000 options to employees, consultants and directors, which were valued and recorded as compensation expense above. Additionally, the Company granted 118,200 and 1,649,754 of warrants in conjunction with the issuance of common stock. The warrants have an exercise price of $1.00 per share, immediate vesting, and expire five years from the date of grant.

The grant date fair value of options and warrants vested during the periods ended May 31, 2010 and 2009 was approximately $1,662,000 and $356,000, respectively. The weighted average grant date fair value of options and warrants granted during the periods ended May 31, 2010 and 2009 was $1.40 and $.30 respectively. As of May 31, 2010, there was approximately $2,234,000 of unrecognized compensation costs related to share-based payments for unvested options, which is expected to be recognized over a weighted average period of 2.78 years.

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The following table represents stock option and warrants activity for the periods ended May 31, 2010 and 2009:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
Options and warrants outstanding - May 31, 2008	3,227,222	1.30	6.52	143,000
Granted	1,854,754	.93	—	—
Exercised	—	—	—	—
Forfeited/expired/cancelled	(106,000)	—	—	—
Options and warrants outstanding - May 31, 2009	4,975,976	1.18	5.37	164,500
Granted	2,684,200	1.86	—	—
Exercised	—	—	—	—
Forfeited/expired/cancelled	—	—	—	—
Options and warrants outstanding May 31, 2010	7,660,176	1.42	5.41	2,761,129
Exercisable - May 31, 2010	6,063,824	1.30	5.76	2,726,162

5 - Stock issued for services and cash Treasury stock

During fiscal year 2010 the Company acquired 1,200,000 and 200,000 shares of common stock at $.28 and $.50 per share, respectively. The shares were included at cost as part of the Company's treasury stock. During fiscal year 2010, the Company reissued 1,118,420 treasury shares at $.50 per share, and realized net cash proceeds of approximately $464,000, net of approximately $95,000 in offering costs. Additionally, the Company accrued approximately $179,000 in accrued stock compensation cost that was recorded as deferred offering costs (See Note 3). The excess proceeds received related to the reissuance of treasury stock at cost is included as treasury stock additional paid-in capital. As of May 31, 2010, approximately $67,575 is included in equity as treasury stock additional paid-in capital, with approximately $100,000 included as a contra-equity for treasury stock acquired at cost.

Additionally, during fiscal year 2010, the Company reissued 81,580 shares of treasury stock for certain consulting services at $1.45 per share, which represented the fair market value of the Company's common stock at the commitment date. The prepaid stock services are amortized over the life of the consulting agreement, and during fiscal year 2010, the Company recognized approximately $69,000 in consulting expense related to this consulting agreement.

Common stock

During the fiscal year 2010, the Company issued 1,172,980 shares of common stock at $.50 per share, and realized cash proceeds of approximately $475,000, net of approximately $114,000 in allocated direct costs. Additionally, the Company accrued approximately $188,000 in accrued stock compensation costs that were recorded as deferred offering costs (See Note 3). During fiscal year 2009, the Company recorded approximately $171,000 in compensation costs that were recorded as deferred offering costs.

Preferred stock

In June, 2009, an investor converted 100,000 shares of Series A Preferred stock into 2,356,142 shares of restricted common stock. At the commitment date, there was no beneficial conversion feature associated with the convertible preferred stock, and accordingly, no constructive dividend was recorded by the Company.

During fiscal year 2010 the Company issued 400,000 shares of Series B Convertible Preferred Stock (Series B) at $5.00 per share for cash proceeds totaling $1,769,000, net of approximately $240,000 in offering costs. Additionally, the Company accrued approximately $642,000 in accrued stock compensation cost that were recorded as deferred offering costs (See Note 3). The Series B is convertible into ten shares of the Company's common stock including any accrued dividend, with an effective fixed conversion price of $.50 per share. The holders of the Series B can only convert their shares to common shares provided the Company has sufficient authorized common shares at the time of conversion. Accordingly, the conversion option is contingent upon the Company increasing their authorized common shares, which occurred April 2010 when the Company's shareholders approved an increase to the authorized shares. At the commitment date, which occurred upon the shareholders approving the increase in the authorized shares, the conversion option related to the Series B was beneficial. The intrinsic value of the conversion option at

the commitment date resulted in a constructive dividend to the Series B holders of approximately $6,000,000. The constructive dividend increased and decreased additional paid-in capital by the same amount. The Series B has liquidation preferences over the common share holders at $5.00 per share plus any accrued dividends. Dividends are payable to the Series B holders when declared by the board of directors at the rate of $0.25 per share per annum. Such dividends are cumulative and accrue whether or not declared and whether or not there are any profits, surplus or other funds or assets of the Company legally available therefore. The Series B holders have no voting rights.

6 - Recent Accounting Pronouncements

Other recent accounting pronouncements issued by the FASB (including its EITF), the AICPA, and the SEC did not or are not believed by management to have a material impact on the Company's present or future financial statements.

7 - Income Taxes

Deferred taxes are recorded for all existing temporary differences in the Company's assets and liabilities for income tax and financial reporting purposes. Due to the valuation allowance for deferred tax assets, as noted below, there was no net deferred tax benefit or expense for the periods ended May 31, 2010 and 2009, and for the period ended October 28, 2003 through May 31, 2009.

Reconciliation of the federal statutory income tax rate of 34 percent to the effective income tax rate is as follows for all periods presented:

Income tax provision at statutory rate	34.0%
State income taxes, net	3.5
Valuation allowance	(37.5)
	0.0%

Net deferred tax assets and liabilities are comprised of the following as of May 31, 2010 and 2009:

Deferred tax asset (liability) current:		
Accrued salary and expenses	$ 97,000	$ 134,000
Warrant amortization	(800)	29,000
Valuation allowance	(96,200)	(163,000)
Deferred tax asset (liability) non-current	$ 0	$ 0
Net operating loss	$ 2,968,000	$ 2,158,000
Expense on non-qualified stock options and OID amortization	843,000	336,000
Other	26,500	3,000
Valuation allowance	$(3,837,500)	$(2,497,000)

The tax benefit for the period presented is offset by a valuation allowance established against deferred tax assets arising from operating losses and other temporary differences, the realization of which could not be considered more likely than not. In future periods, tax benefits and related tax deferred assets will be recognized when management considers realization of such amounts to be more likely than not.

At May 31, 2010, the Company had available net operating loss carryforwards of approximately $7,456,000 which expire beginning in 2022.

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8 - Convertible Notes

In July 2009, the Company amended certain promissory notes into convertible notes that can be converted into shares of common stock. The notes had a fixed conversion price of $.45 per share. During fiscal year 2010, $146,456 in notes and accrued interest converted into 325,458 shares of common stock. At the commitment date, the conversion option associated with the notes was deemed to be beneficial, and the Company recorded a beneficial conversion feature of $38,604 related to the intrinsic value of the conversion option as a debt discount and corresponding increase to additional paid-in capital. For fiscal year 2010, the Company recorded $38,604 in interest expense as the debt discount was fully amortized upon the conversion of the notes into common stock.

9 - Commitments and Contingencies

Related to certain litigation whereby the Company was both a defendant and a plaintiff, the Company entered into a settlement agreement in December 2008. As part of the settlement agreement, the Company agreed to pay $50,000 in January 2009 and $25,000 on or before January 14, 2010 to the plaintiff. The Company paid the $50,000 in January 2009. The remaining $25,000 was unsecured and accrued interest at 10.0 percent per annum. The Company paid $27,500 in January 2010. As of May 31, 2010, all amounts related to this litigation have been paid and settled.

10 - Related Party Transactions

A director provided legal services to the Company over the past several years. As of May 31, 2010 the Company owed the director $43,985 and it is included in the accompanying consolidated financial statements as “indebtedness to related parties” as of May 31, 2010. As of May 31, 2010 no arrangements had been made for the Company to repay the balance of this obligation. The amount has been classified as short-term, as the amount is payable on demand. The Company anticipates that the director will continue to provide legal services in the future.

In May and July 2007, the Company issued $150,000 in promissory notes with a stated interest rate of 14% to a director of the Company, and a maturity date of six months from the issuance date. During fiscal year 2010, the Company made cash payments of $40,000 on the notes. As of May 31, 2010, the balance in the notes is $110,000. The notes have no stated maturity, and are essentially payable upon demand. Accordingly, the Company has Classified the balance as short-term obligation as of May 31, 2010.

A former director of the Company was owed $337,342 related to certain clinical research data that was obtained by the former director and later purchased by the Company. During 2009, the contract that created the debt, expired pursuant to the statute of limitations. As a result, during the period ended May 31, 2009, the Company recognized $337,342 in income due to the extinguishment of this debt.

Patents

The Company has a License Agreement with Allen D. Allen, the Company’s President CEO and Chairman of the Board, that gives us the worldwide, exclusive right to develop, market and sell compounds disclosed by the patent claims, practice methods taught by the patent claims, and exploit specified technology related to the patents. This includes issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057, European Patent Nos. 0690725 and 1438970, Hong Kong Patent No. 1067958, Australian Patent No. 684074, Canadian Patent No. 2156495, as well as the federally registered trademarks, CYTODYN (U.S. Registration No. 2095498) and CYTOLIN (U.S. Registration No. 2095497), and a related trademark symbol. The term of the license agreement is for the life of the patents of which the first will expire in 2013. The original expiration dates on the issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057 are 2013, 2014 and 2013, respectively. The original licensee and predecessor to the Company, CytoDyn of New Mexico, Inc. granted Mr. Allen 25,000 shares of its common stock in exchange for the license under the license agreement. The Company estimates its costs associated with these issued patents to be approximately $100,000 per year. The Company intends to file a new patent application covering its humanized version(s) of Cytolin during the next fiscal year if our research and development efforts warrant it.

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11 - Subsequent Events

In September 2009, the Company entered into an agreement with Massachusetts General Hospital (MGH) to provide financial support for the purpose of conducting an ex-vivo study of the Company's lead drug, Cytolin(R). This study is intended as a prelude to an in-vivo study. Costs are estimated at approximately $550,000 of which 75%, or $412,000, was paid to Massachusetts General Hospital by November 2010. During 2009 the Company agreed to provide an additional $204,000 to Massachusetts General Hospital for the current clinical trial of Cytolin(R). Additionally, per the agreement with MGH, the Company is obligated to pay an additional $137,000 by October 21, 2010. This amount is included in the cost above. This will enable the Principal Investigator to hire additional personnel in order to ensure that key data from the study will be available by December 31, 2010.

In July 2010, two of the Company's executives forgave approximately $230,000 in accrued salaries that are included as "Accrued salaries - related party" at May 31, 2010.

In August 2010 the Company's Board of Directors approved a private placement offering to sell 2,000,000 shares of the Company's no par common stock to accredited investors at $1.00 per share. The Company has raised approximately $316,000 in cash related to this private placement.

In September 2010, the Company issued 25,000 stock options each to a director and a consultant at an exercise price of $1.20. The options expire in 2020.

On December 6, 2010 the Company issued 500,000 stock options to the newly elected Chief Executive Officer at an exercise price of $1.19. The options vest 25% upon first year anniversary and 6.25% vest each following quarter.

On May 24, 2011, the Company and The General Hospital Corporation, d/b/a/ Massachusetts General Hospital ("MGH") entered into an amendment to their September 28, 2009 Clinical Trial Agreement to extend the original study entitled, "An observational study to determine the in-vitro immunologic and virology activity of Cytolin". The Amendment enables MGH Principal Investigator Eric Rosenberg, M.D. to further explore his initial findings regarding the potential mechanism of action of Cytolin to treat HIV-positive adults. The Company has agreed to pay MGH the remaining unpaid balance of $291,590 of the total research grant of $865,375 over the next six months, at which point the Company currently anticipates the extended study will be complete, although there is not a contractual obligation to do so in that timeframe.

On June 22, 2011, the Company was notified by the Securities and Exchange Commission of certain inquiries regarding activities related to fund-raising activities of a certain Company officer. The Company is fully cooperating in responding to this inquiry. At this time, we are not able to estimate the results or costs associated with this inquiry.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Disclosure Controls and Procedures

As of May 31, 2010, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, management has evaluated the effectiveness of the design and operations of the Company's disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were not effective as of May 31, 2010 as a result of the material weakness in internal control over financial reporting discussed below.

Internal Control Over Financial Reporting.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States. Internal control over financial reporting includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the Company's transactions; (ii) provide reasonable assurance that transactions are recorded as necessary for preparation of our financial statements and that receipts and expenditures of the Company's assets are made in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of the Company's financial statements would be prevented or detected.

Our management conducted an evaluation of the effectiveness of our internal control over financial reporting as of May 31, 2010 using the criteria set forth in the Internal Control over Financial Reporting - Guidance for Smaller Public Companies issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based upon the evaluation, our management concluded that our internal control over financial reporting was not effective as of May 31, 2010 because of material weaknesses in our internal control over financial reporting. A material weakness is a control deficiency that results in a more than remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis by employees in the normal course of their assigned functions. Our management concluded that we have several material weaknesses in our internal control over

financial reporting because of inadequate segregation of duties over authorization, review and recording of transactions as well as the financial reporting of such transactions. Due to the Company's limited resources, management has not developed a plan to mitigate the above material weaknesses. Despite the existence of these material weaknesses, we believe the financial information presented herein is materially correct and in accordance with the generally accepted accounting principles.

This Annual Report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the Securities Exchange Commission that permit the Company to provide only management's report in this Annual Report.

Changes in Control Over Financial Reporting

No change in the Company's internal control over financial reporting occurred during the year ended May 31, 2010, that materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

As of May 31, 2010, the following persons acted as the Directors (or as a Director nominee) and Executive Officers of the Company.

Name	Age	Position(s)
Allen D. Allen	74	Chairman of the Board of Directors, President, Chief Executive Officer
Corinne Allen, CPA	43	Chief Financial Officer, Vice President and Secretary
Nader Z. Pourhassan, PhD.	47	Chief Operating Officer
Gregory A. Gould, CPA	44	Director
Ronald J. Tropp, Esq.	66	Director
George F. Dembow	77	Director
Jordan Naydenov	49	Director
Kenneth J. Van Ness	58	Director Nominee

Allen D. Allen. Mr. Allen has been Chairman of our Board and our President and Chief Executive Officer since October 2003. Before joining CytoDyn, he was the Chairman of the Board of Directors and Chief Executive Officer of CytoDyn of New Mexico, Inc., since its inception in 1994. From 1990 to 1994 he was a research associate with Olive View-UCLA Medical Center, where he collaborated and published with various medical professors original research on HIV, dermatology and general immunology and was the co-investigator on an autologous vaccine study. From 1986 to 1990 Mr. Allen was director of scientific affairs, Center for Viral Diseases, Northridge, California, where he conducted and published original research on a large cohort of patients with complex constellations of neuroimmunologic complaints. From 1971 to 1986 he was president of Algorithms, Incorporated where he conducted and published original research in the areas of artificial intelligence, perception, man and machine systems and societal engineering. Over the past thirty years, he has published numerous papers in the peer review science and medical journals. He has also served as an investigator on clinical research sponsored by major pharmaceutical companies, such as Ortho Biotech, Johnson & Johnson, and Sanofi-Winthrop. Mr. Allen patented the family of HIV/AIDS therapies licensed to CytoDyn. He is a member of the American Physical Society and the American Federation of Scientists, a life member of the Institute of Electrical and Electronics Engineers, and a founding member of the Editorial Board of Physics Essays. Mr. Allen received an Associates of Arts degree from the University of California at Berkeley in 1957 and attended the University of California at Los Angeles from 1957 to 1959. In 1953 he received a national ARS Student Award in aeronautics from the American Rocket Society (now the Institute of Aeronautics and Astronautics). Mr. Allen is the father of Corinne E. Allen, our Chief Financial Officer.

Corinne Allen, CPA. Ms. Allen has been an officer and/or director of the Company since October 2003. Ms. Allen resigned as a director in July 2009. Ms. Allen was our Chief Financial Officer from October 28, 2003 through May 2004. From 2004 until July 2009 Ms. Allen served as our Vice President of Business Development, at which time she was re-appointed Chief Financial Officer. Ms. Allen served as Secretary and Treasurer of CytoDyn of New Mexico, Inc. where she was also a Director from June 1994 to October 2003. Ms. Allen is a licensed Certified Public Accountant. From 1999 to 2003, Ms. Allen was employed as a Senior Manager at Deloitte & Touche in San Francisco, and, from 1992 to 1998 she was a CPA at Hallquist Jones P.C. She has over 24 years experience in the accounting industry. Ms. Allen received a B.S. in Business Administration from California State University Northridge with a specialty in Accounting Theory and Practice in 1992. She has been a Certified Public Accountant since January 1997. Ms. Allen is the daughter of Allen D. Allen, our Chairman and CEO. Ms. Allen is a member of the American Institute of Certified Public Accountants (AICPA).

Nader Z. Pourhassan, PhD. Dr. Pourhassan became the Company's Chief Operating Officer in May 2008. Born in Tehran, Iran in 1963, Dr. Pourhassan immigrated to the United States in 1977 and became a U.S. citizen in 1991. He received his Bachelor of Science from Utah State University in 1985, his Masters of Science from Brigham Young University in 1990 and his PhD in Mechanical Engineering from the University of Utah in 1998. Prior to joining the Company from 2006 to 2008, Dr. Pourhassan was an instructor of Mechanical Engineering at The Center for Advanced Learning in Oregon, and from 2005 to 2006 was an instructor at Mount Hood Community College. Over the past twenty years, Dr. Pourhassan has also managed a family-owned export/import and manufacturing businesses.

Gregory A. Gould, CPA. Mr. Gould has been a Director since March 20, 2006 and a member of our Audit Committee and Compensation Committee since May 15, 2006. Mr. Gould has been the Chief Financial Officer and Treasurer of SeraCare Life Sciences, Inc. ("SeraCare") since August 2006, and the Secretary of SeraCare since November 2006. From August 2005 to August 2006, Mr. Gould provided financial and accounting consulting services through his consulting company, Gould LLC. From April 2005 to August 2005, Mr. Gould served as the Chief Financial Officer and Senior Vice President of Integrated BioPharma, Inc., a life sciences company serving the pharmaceutical, biotechnology and nutraceutical markets. Prior to that, from February 2004 through January 2005, Mr. Gould served as the Chief Financial Officer, Treasurer and Secretary of Atrix Laboratories, Inc., an emerging specialty pharmaceutical company focused on advanced drug delivery. From 1996 through October 2003, Mr. Gould served as Director of Finance and then as the Chief Financial Officer and Treasurer of Colorado MEDtech, a high tech software development, product design and manufacturing company. Mr. Gould holds a B.S. in Business Administration from the University of Colorado, Boulder and is a Certified Public Accountant in the State of Colorado. On March 22, 2006, prior to Mr. Gould's appointment as an officer of SeraCare, SeraCare filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court. On February 21, 2007, the Bankruptcy Court entered an order confirming the Plan of Reorganization. The Plan of Reorganization became effective on May 17, 2007, on which date the provisions of the Plan of Reorganization became operative and the transactions contemplated by the Plan of Reorganization were consummated.

Ronald J. Tropp. Mr. Tropp was a Director of the Company from October, 2003 to January 31, 2006 and was reappointed in January 2007. He previously served as a director for CytoDyn of New Mexico, Inc. Mr. Tropp received his Bachelor of Arts degree from Swarthmore College 1965, and a Juris Doctorate from the University of Wisconsin - Madison in 1968. He is admitted to the practice of law in California and was previously admitted in Wisconsin and New York. He has practiced entertainment and transactional law for over 35 years and has been representing the Company and CytoDyn of New Mexico, Inc. since the fall of 1999. Previously, he served as corporate counsel and director for Pacific Coast Medical Enterprises, which owned five acute care hospitals in Southern California. He has been a sole practitioner of law since 1997.

George F. Dembow. Mr. Dembow has been a Director since February 2008. From 1972 to the present day, he started and built Arizona Natural Resources, Inc., a manufacturer and contractor of cosmetics, toiletries and candles. Mr. Dembow attended Cornell University in Ithaca, NY from 1950 to 1954 and graduated with a BS with an additional year credit toward an MBA. Mr. Dembow was a Fighter pilot in the U.S. Air Force from 1954 - 1957. He was employed by Fischbach and Moore, Inc., a world-wide electrical contractor traded on the New York Stock Exchange from 1958 to 1966, becoming a Vice-President in Washington, DC in 1963. Mr. Dembow was President and Co-Owner of Apache Airlines, Inc., a commuter airline operating from Phoenix, Arizona with scheduled service in Arizona, Nevada, Montana and North Dakota from 1966 to 1971.

Jordan Naydenov. Mr. Naydenov has been a Director of the Company since June 2009. Mr. Naydenov immigrated to the U.S. in 1982 from Bulgaria where he was a competitive gymnast. Mr. Naydenov purchased a gymnasium, Naydenov Gymnastics, which he parlayed into a successful business, and sold in 2005. Since 2001, he has served as the Vice President and a Director of Milara, Inc., since 2006 he has served as the Treasurer of Milara, Inc., and since 2006, he has served as a Director of Milara International. Milara Inc. and Milara International are leading providers of stencil and screen printing systems for the surface mount and semiconductor industries.

Kenneth J. Van Ness. Mr. Van Ness is a nominee to be a Director of the Company with a term beginning in June 2010. Prior to joining the Company, in the past decade he had focused as a merchant mortgage banker and investor. Currently he is managing director of Greenwood Hudson Portfolio LLC and of Technology Capital Services. These companies are comprised of investments in over 20 public companies. In addition to these companies, Mr. Van Ness has been a managing director of Hudson Pointe LLC, Debuel Development LLC, Grande Villas LLC and Grande Estates LLC since 2006, and Greenwood Management since 1997. During the past 25 years he has held various "C-level" positions (positions at the highest level of management), including as Chairman, Chief Executive Officer, Chief Operating Officer, and Managing Director, in both domestic and international public and private companies, including, without limitation, as Chief Operating Officer of International Division of Royal Resorts, Managing Director of Buena Vista Hospitality, Chairman and Chief Executive Officer of International Resort Services, Managing Director of Medallion Mortgage and Financial Services, Managing Director Bankers Financial, and Chief Marketing Officer of Lasergate Systems. His responsibilities combined senior management positions with profitability, marketing, operations, staff and investor relations oversight. Throughout his career he has participated in equity and debt transactions in excess of $500M. In addition, Mr. Van Ness provided consulting services to real estate investors with complex financial challenges. Mr. Van Ness received his Bachelor of Science degree from the University of Florida in 1973.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our Directors, Officers and beneficial owners of more than 10% of our common stock to file reports of ownership and reports of changes in the ownership with the Securities and Exchange Commission. Such persons are required by Securities and Exchange Commission regulations to furnish us with copies of all Section 16(a) forms they file. Nader Pourhassan and George Dembow have not filed reports on Form 3 - Initial Statement of Beneficial Ownership of Securities, as required under Section 16(a) of the Exchange Act. Each of the following persons has failed to file reports on Form 4 -Statement of Changes in Beneficial Ownership, or Form 5 - Annual Statement of Beneficial Ownership of Securities as required to be filed under Section 16(a) of the Exchange Act: Allen D. Allen, Corinne Allen, Nader Pourhassan, Gregory A. Gould, Ronald J. Tropp, George F. Dembow, Jordan Naydenov, Kenneth J. Van Ness. The forms will be filed as soon as practicable.

Code of Ethics

We have adopted a Code of Ethics for our Senior Executive Officers (the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Treasurer and Controller (or persons performing similar functions)), as well as a Code of Business Conduct and an Insider Trading Policy for the Company. These can all be found on our website at www.cytodyn.com under the Management tab.

Audit Committee

An Audit Committee Charter was adopted by the Board of Directors and became effective on June 1, 2007. Our Audit Committee Charter can be found on our website at www.cytodyn.com under the Management tab. The Audit Committee assists the full Board of Directors in its general oversight of our financial reporting, internal controls, and audit functions, and is directly responsible for the appointment, compensation and oversight of the work of our independent registered public accounting firm. The Board of Directors resolved to establish an audit committee of the Board of Directors composed of Board members Gregory A. Gould, CPA, George F. Dembow and Ronald J. Tropp. One of the members of the audit committee, Mr. Gould, is a "financial expert" as defined in Regulation S-B Item 401(e)(1)(ii)(2), and he is the only independent member of the Audit Committee at this time. Mr. Dembow and Mr. Tropp, the other members of our Audit Committee are not independent. The Nasdaq Stock Market Rules (the "NASDAQ Rules") state that the Audit Committee must have at least three members, each of whom is independent. As discussed in Item 13 "Certain Relationships and Related Transactions and Director Independence" below, the Company has outstanding indebtedness owed to Mr. Dembow in the form of interest-bearing promissory notes. The Board considered the indebtedness when evaluating Mr. Dembow's independence, and determined that it constitutes a relationship, which, in the opinion of the Board, which would interfere with the exercise of his independent judgment in carrying out the responsibilities of a director. The Board previously believed Mr. Tropp to be independent; however the Board has since reevaluated the independence of Mr. Tropp based on outstanding legal service fees owed by the Company to Mr. Tropp, and the Board has determined that Mr. Tropp is not independent under the NASDAQ Rules. The Board is currently evaluating the composition of the Audit Committee and seeking additional or replacement members who meet the requirements of the NASDAQ Rules.

Item 11. Executive Compensation

The following table provides an overview of compensation that CytoDyn paid to the named Executive Officers for the fiscal years ended May 31, 2010 and 2009.

SUMMARY COMPENSATION TABLE

Name and principal position (a)	Year (b)	Salary (c)	Bonus (d)	Stock Awards (e)(4)(5)	Option Awards (f)(5)	All other Compensation (i)(6)	Total (j)
Allen D. Allen,	5/31/2009	60,500	—	—	—	—	60,500
President & CEO (1)	5/31/2010	200,000	27,250	—	426,000	2,063	655,313
Corinne Allen,	5/31/2009	8,000	—	—	—	—	8,000
CFO (2)	5/31/2010	150,000	41,533	—	426,000	1,500	619,033
Nader Z. Pourhassan,	5/31/2009	175,000	—	80,500	—	—	255,500
COO (3)	5/31/2010	200,000	50,800	—	426,000	—	676,800

(1) As of February 2006, Mr. Allen's annual salary of $150,000 was approved by Board of Directors. However, in the fiscal year ended May 31, 2009, Mr. Allen was actually only paid $60,500. In April 2010, Mr. Allen's annual salary for $200,000 was approved by the Board of Directors to be paid semimonthly as cash is available. There is no Employment Agreement with Mr. Allen.

(2) In February 2006 by the Board of Directors approved Ms. Allen's annual salary of $100,000. However, in the fiscal year May 31, 2009, Ms. Allen was actually paid only $8,000. In April 2010, the Board of Directors increased Ms. Allen's annual salary to $150,000 to be paid semimonthly as cash is available. There is no Employment Agreement with Ms. Allen.

(3) Dr. Pourhassan entered into a personal services agreement with the Company in August 2008 for seven years. His annual base salary per his personal services agreement is $200,000 beginning June 1, 2008, and $200,000 in 2010. However, in fiscal year May 31, 2009, Mr. Pourhassan was actually paid only $175,000.

(4) The figure reflected for Dr. Pourhassan does not include the stock awards or other monies paid to the individuals set forth in Dr. Pourhassan's personal services agreement as disclosed in Footnote 3 of our Financial Statements.

(5) Stock awards and option awards represent the grant date fair value of the awards pursuant to FASB ASC Topic 718, as reflected and discussed under "Stock for Services" in the Notes to the Financial Statements.

(6) The "All Other Compensation" column for fiscal 2010 includes the Company's contributions to the CytoDyn Inc. 401(k) Profit Sharing Plan.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth the number of shares of common stock covered by outstanding stock option awards that are exercisable and unexercisable for each of our named executive officers as of May 31, 2010. Stock awards and option awards represent the grant date fair value of the awards pursuant to FASB Topic 718.

Outstanding Equity Awards at Fiscal Year-End

	Option Awards					Stock Awards			
Name (a)	Number of securities underlying unexercised options (#) exercisable (b)	Number of securities underlying unexercised options (#) unexercisable (c)	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#) (d)	Option exercise price ($) (e)	Option expiration date (f)	Number of shares or units of stock that have not vested (g)	Market value of shares or units of stock that have not vested ($) (h)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (i)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested ($) (j)
Allen D. Allen, President & CEO	385,416 (1)	289,584 (1)	—	$0.72 - $ 2.95	2014 - 2017	—	—	—	—
Corinne Allen, CFO	385,416 (2)	289,584 (2)	—	$0.72 - $ 2.95	2014 - 2017	—	—	—	—
Nader Z. Pourhassan, COO	33,333 (3)	266,667 (3)	—	$ 1.95	2014	—	—	—	—

(1) Mr. Allen has options to purchase 675,000 shares of common stock. 385,416 have vested. 22,917 vest within 120 days, and 300,000 vest in equal monthly increments during the 36 month period ending January 2013. None have been exercised to date. 25,000 were granted in FYE 2006, 50,000 were granted in FYE 2007, 300,000 were granted in FYE 2008, and 300,000 were granted in FYE 2010.
(2) Ms. Allen has options to purchase 675,000 shares of common stock. 385,416 have vested. 22,917 vest within 120 days, and 300,000 vest in equal monthly increments during the 36 month period ending January 2013. None have been exercised to date. 25,000 were granted in FYE 2006, 50,000 were granted in FYE 2007, 300,000 were granted in FYE 2008, and 300,000 were granted in FYE 2010.
(3) Dr. Pourhassan has options to purchase 300,000 shares of common stock. 33,333 have vested. 266,667 vest in equal monthly increments during the 36 month period ending January 2013. None have been exercised to date. The options were granted in FYE 2010.

We know of no contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment to any named executive officer at, following, or in connection with the resignation, retirement or other termination of such executive officer, or a change in control of the Company, or a change in such executive officer's responsibilities following a change in control.

Employee Pension, Profit Sharing or other Retirement Plans

Effective January 1, 2010, we adopted a profit sharing plan, qualifying under Section 401(k) of the Internal Revenue Code and covering substantially all of our employees. We match participant's contributions in cash, not to exceed 3% of the participant's total compensation. Other than this 401(k) Plan, we do not have any other defined benefit pension plan, profit sharing or other retirement plan.

Compensation of Directors

Our Directors receive compensation in the form of stock option grants. The Directors receive no cash compensation. Stock option grants to our Directors were as follows in 2010:

Name (a)	Fees earned or paid in cash ($) (b)	Stock awards ($) (c)	Option awards ($) (d)	Non-equity incentive plan compensation (e)	Nonqualified deferred compensation earnings ($) (f)	All other compensation ($) (g)	Total (h)
Ronald J. Tropp	—	—	$142,000	—	—	—	—
Gregory Gould, CPA	—	—	$177,500	—	—	—	—
George F. Dembow	—	—	$ 71,000	—	—	—	—
Jordan Naydenov	—	—	$106,500	—	—	—	—
Kenneth J. Van Ness (Director Nominee)	—	—	—	—	—	—	—

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

The following table sets forth the beneficial ownership of our common stock as of November 30, 2010, by (i) each person or entity who is known by us to own beneficially more than 5% of the outstanding shares of common stock, (ii) each of our Directors, (iii) each of the Executive Officers named in the Summary Compensation Table, and (iv) all of our Directors and Executive Officers as a Group.

Name And Address of Beneficial Owner (1)	Number of Shares	Percent of Total
Owners of more than 5%		
C. David Callaham	1,215,190	5.48%
UTEK Corporation 2109 Palm Avenue Tampa, Florida 33605	1,628,142	7.21%
Directors and Executive Officers		
Allen D. Allen, Chairman of the Board, Director, President and Chief Executive Officer	2,248,695 (2)	9.70%
Corinne Allen, Chief Financial Officer	1,892,204 (3)	8.29%
Nader Z. Pourhassan, Chief Operating Officer	430,000 (4)	2.01%
Gregory A. Gould, Director	146,667 (5)	0.70%
Ronald J. Tropp, Director	168,333 (6)	0.80%
George F. Dembow, Director	409,567 (7)	1.92%
Jordan Naydenov, Director	1,534,600 (8)	6.83%
Kenneth J. Van Ness, Director Nominee	2,665,374 (9)	11.29%
All Directors and Executive Officers as a Group	9,391,273	31.20%

(1) Unless otherwise indicated, the business address of each Shareholder is c/o CytoDyn Inc., 1511 Third Street, Santa Fe, New Mexico 87505.

(2) This number includes (i) 1,773,695 shares of common stock directly held by Mr. Allen, and (ii) 475,000 shares of common stock subject to purchase by Mr. Allen pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010.

(3) This number includes (i) 1,417,204 shares of common stock directly held by Ms. Allen, and (ii) 475,000 shares of common stock subject to purchase by Ms. Allen pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010.

(4) This number includes (i) 100,000 shares of common stock directly held by Dr. Pourhassan, (ii) 100,000 shares of common stock subject to purchase by Dr. Pourhassan pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010, and (iii)

230,000 shares of common stock held by Dr. Pourhassan's spouse. It should be noted that the figures reflected above are inconsistent with the figures provided by Dr. Pourhassan in response to a director and officer questionnaire that was provided to him by the Company. The records of the Company's transfer agent indicate that Dr. Pourhassan holds 370,000 shares directly and that 375,000 shares are held by his spouse.

(5) This number includes (i) 5,000 shares of common stock directly held by Mr. Gould, and (ii) 141,667 shares of common stock subject to purchase by Mr. Gould pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010.

(6) This number represents 168,333 shares of common stock subject to purchase by Mr. Tropp pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010.

(7) This number includes 367,900 shares of common stock directly held by Mr. Dembow, and 41,667 shares of common stock subject to purchase by Mr. Dembow pursuant to currently exercisable options or options exercisable within 60 days after November 30, 2010.

(8) This number includes (i) 606,400 shares of common stock directly held by Mr. Naydenov, (ii) 60,000 shares of Series B Preferred Stock held by Mr. Naydenov that are currently convertible into 600,000 shares of common stock, (iii) 328,200 shares of common stock subject to purchase by Mr. Naydenov pursuant to currently exercisable options or warrants or options exercisable within 60 days after November 30, 2010.

(9) This number includes the following shares over which Mr. Van Ness has indirect voting and dispositive control: (i) 1,929,041 shares of common stock held in the name of Greenwood Hudson Portfolio, LLC, (ii) 728,000 shares of common stock held in the name of Technology Capital Services, LLC, and (iii) 8,333 shares of common stock subject to purchase by Mr. Van Ness pursuant to currently exercisable options or warrants or options exercisable within 60 days after November 30, 2010.

We have no knowledge of any other arrangements, including any pledge by any person of our securities, the operation of which may at a subsequent date result in a change in control of the Company.

See the table in "Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" above for our Equity Compensation Plan Information as of May 31, 2010.

Item 13. Certain Relationships and Related Transactions and Director Independence

Related Party Transactions, Actual or Proposed, during the two years ended May 31, 2010

We propose to be, or during the last two years were, party to certain transactions involving amounts in excess of $120,000, in which our Directors (including Director nominees), Executive Officers, others hold more than 5% of any class of our securities, or their immediate family members, had or will have a material interest. The interested parties and transactions are described below.

In May and July 2007, we issued to George Dembow, a director of the Company, $150,000 in interest-bearing promissory notes. The notes bear interest at 14% per annum, are unsecured, and have no stated maturity date. As of May 31, 2010, the balance of the notes is $110,000, and is included as "Indebtedness to Related Parties" in the financial statements.

The Company has a License Agreement with Allen D. Allen, the Company's President CEO and Chairman of the Board, that gives us the worldwide, exclusive right to develop, market and sell compounds disclosed by the patent claims, practice methods taught by the patent claims, and exploit specified technology related to the patents. This includes issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057, European Patent Nos. 0690725 and 1438970, Hong Kong Patent No. 1067958, Australian Patent No. 684074, Canadian Patent No. 2156495, as well as the federally registered trademarks, CYTODYN (U.S. Registration No. 2095498) and CYTOLIN (U.S. Registration No. 2095497), and a related trademark symbol. The term of the license agreement is for the life of the patents of which the first will expire in 2013. The original expiration dates on the issued U.S. Patent Nos. 5,424,066; 5,651,970 and 6,534,057 are 2013, 2014 and 2013, respectively. The original licensee and predecessor to the Company, CytoDyn of New Mexico, Inc. granted Mr. Allen 25,000 shares of its common stock in exchange for the license under the license agreement. The Company estimates its costs associated with these issued patents to be approximately $100,000 per year.

Director Independence

In determining director independence, the Company uses the definition of independence set out in Rule 5605(a)(2) of The Nasdaq Stock Market Rules (the "NASDAQ Rules"). Rule 5605 (b) (1) of the NASDAQ Rules requires that a majority of the members of the Company's Board of Directors be independent in that they are not an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Our Board of Directors has determined that two of our directors, Gregory A. Gould, CPA, and Jordan Naydenov, meet the requirements of the NASDAQ Rules for the independence of directors. The Board does not currently have a majority of independent members. As discussed above, the Company has outstanding indebtedness owed to Mr. Dembow in the form of interest-bearing promissory notes. The Board considered the indebtedness when evaluating Mr. Dembow's independence, and determined that it constitutes a relationship, which, in the opinion of the Board, would interfere with the exercise of his independent judgment in carrying out the responsibilities of a director. In evaluating Mr. Gould's independence, the Company considered indebtedness in the amount of $9,000 owed by the Company to an educational fund benefitting Mr. Gould's extended family, and determined that it did not constitute a relationship, which, in the opinion of the Board, would interfere with the exercise of his independent judgment in carrying out the responsibilities of a director. The Board previously believed Mr. Tropp to be independent; however the Board has since reevaluated the independence of Mr. Tropp based on outstanding legal service fees owed by the Company to Mr. Tropp, and the Board has determined that Mr. Tropp is not independent under the NASDAQ Rules. The Board is currently seeking additional or replacement members who meet the independence requirements of the NASDAQ Rules.

The NASDAQ Rules states that the Audit Committee must have at least three directors, each of whom is independent. Our Audit Committee consists of one independent director, Mr. Gould, and two directors that are not independent, Mr. Dembow and Mr. Tropp. The independent members of our Audit Committee also meet the additional independence and experience requirements of the SEC and the NASDAQ Rules applicable specifically to members of the Audit Committee. The NASDAQ Rules state that all members of the Compensation Committee must be independent, except under exceptional and limited circumstances. Our Compensation Committee consists of two independent directors, Mr. Gould and Mr. Naydenov and two directors that are not independent, Mr. Tropp and Mr. Dembow.

Item 14. Principal Accounting Fees and Services

Audit Fees

The aggregate fees billed during the fiscal years ended May 31, 2010 and 2009 for professional services rendered by our principal accounting firm, Pender Newkirk and Company, for the audit of the financial statements included in Form 10-K, and for the review of the interim condensed financial statements included in Form 10-Q, were approximately $148,000 and $129,000, respectively.

Audit Related Fees

The aggregate fees billed during the fiscal years ended May 31, 2010 and 2009 for assurance and related services rendered by our current principal accounting firm, Pender Newkirk & Company, were approximately $0 and $0, respectively.

Tax Fees

The aggregate fees billed during the fiscal years ended May 31, 2010 and 2009 for professional services rendered by our principal accounting firm, Pender Newkirk Company for tax compliance, tax advice, and tax planning were approximately $0 and $0, respectively.

All Other Fees

The aggregate fees billed during the fiscal years ended May 31, 2010 and 2009 for all other professional services rendered by our principal accounting firm Pender Newkirk & Company were approximately $0 and $0, respectively.

Board of Directors Pre-Approval Process, Policies and Procedures

The Board of Directors resolved to establish an audit committee composed of Board members Gregory A. Gould, CPA, George F. Dembow and Ronald J. Tropp. The Board of Directors pre-approves all engagements for audit and non-audit services provided by the Company’s principal accounting firm, Pender Newkirk and Company.

Our principal auditors have performed their audit procedures in accordance with pre-approved policies and procedures established by our Board of Directors. Our principal auditors have informed our Board of Directors of the scope and nature of each service provided. With respect to the provisions of services other than audit, review, or attest services, our principal accountants brought such services to the attention of our Board of Directors prior to commencing such services.

PART IV

Item 15. Exhibits and Financial Statement Schedules

The following documents are filed as part of this Annual Report on Form 10-K:

1. Consolidated Financial Statements

   See the Consolidated Financial Statements starting on page 21.

2. Exhibits

The exhibits listed in the Exhibit Index, which appears immediately following the signature page and is incorporated herein by reference, and filed as part of this Annual Report on Form 10-K.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CYTODYN INC.
(Registrant)

By: /s/ Kenneth J. Van Ness
Name: Kenneth J. Van Ness
Title: President and CEO
Date: August 4, 2011

EXHIBITS INDEX

Exhibit Number	Description
	Articles of Incorporation and Bylaws
3.1	Rexray Articles of Incorporation shell company (incorporated herein by reference to Exhibit 3.1 on Form 10SB12G Registration of Securities for Small Business Issuers filed July 11, 2002).
3.2	Bylaws of Corporation (incorporated by reference herein to Exhibit 3.2 filed with Form 10SB12G, Registration of Securities for Small Business Issuer filed July 11, 2002).
3.3	Amendment to the Articles of Incorporation changing company name from Rexray to CytoDyn Inc., and effective a one for two reverse split of its common shares (incorporated herein by reference to filed Exhibit 3.2 on Current Form 8-K filed November 12, 2003).
3.4	Amendment to Articles of Incorporation dated September 2009 designating CytoDyn Inc.'s preferred Series B non-voting shares sold in a private placement. (Incorporated by reference to Exhibit 3.4 to Form 10-K filed March 12, 2010).
3.5	Amendment to Articles of Incorporation dated April 24, 2010 increasing the number of authorized shares to 100,000,000 (incorporated herein by reference to Exhibit 3.5 on Current Form 8-K filed April 29, 2010).
	Plan of Acquisition
2.1	Acquisition Agreement for reverse merger acquisition of shell company by CytoDyn of New Mexico Inc. (incorporated herein by reference to Exhibit 10.1 with Current Form 8-K/A filed January 12, 2004).
	Material Contracts
10.1	Patent License Agreement between Allen D. Allen and CytoDyn of New Mexico Inc. (incorporated herein by reference to Exhibit 10.2 with Form 10-KSB, Annual Report for Small Business Issuers filed September 14, 2004).
10.2	Amendment to Patent License Agreement (incorporated herein by reference to Exhibit 10.6.1 filed with Form SB-2/A Registration of Securities for Small Business Issuer filed March 21, 2005).
10.3	Exclusive License Agreement between Advanced Genetic Technologies, Inc. And The CBR Institute for Biomedical Research Inc. (incorporated herein by reference to Exhibit 10.2 filed with Current Form 8-K filed February 5, 2007).

10.4	Legal Settlement between CytoDyn of New Mexico Inc., Officers Allen D. Allen and Corinne Allen and CytoDyn Inc on the one hand and Maya LLC, Rex Lewis, and AIDS Research LLC on the other hand entered into December 2008. (Incorporated by reference to Exhibit 10.6 to Form 10-K filed March 12, 2010).
10.5	Statement of Work for Vista Biologicals Corporation to manufacture Cytolin(R), CytoDyn Inc.'s lead product to be used in human clinical trials entered into June 2008. (Incorporated by reference to Exhibit 10.7 to Form 10-K filed March 12, 2010).
10.6	Clinical Trial Agreement between The General Hospital Corporation d/b/a Massachusetts General Hospital and CytoDyn Inc., entered into September 28, 2009 for conducting clinical trials using Cytolin (incorporated herein by reference to Exhibit 10.1 of CytoDyn Inc. Current Report on Form 8-K dated September 29, 2009).
10.7	Amendment Number 1 to the Clinical Trial Agreement between The General Hospital Corporation d/b/a Massachusetts General Hospital and CytoDyn Inc., entered into October 14, 2009.
10.8	Amendment Number 2 to the Clinical Trial Agreement between The General Hospital Corporation d/b/a Massachusetts General Hospital and CytoDyn Inc., entered into December 1, 2009.
10.9	Amendment Number 3 to the Clinical Trial Agreement between The General Hospital Corporation d/b/a Massachusetts General Hospital and CytoDyn Inc., entered into March 1, 2010.
10.10	CytoDyn Inc. 2004 Stock Incentive Plan.
10.11	CytoDyn Inc. 401(k) Profit Sharing Plan.

Other

21.1	Subsidiaries.

Consents of Experts and Counsel
Certifications

31.1	Certification by CEO.
31.2	Certification by CFO.

32.1	Certification of CEO pursuant to 18. U.S.C. Section 1350 as adopted, pursuant to Section 906 of Sarbanes-Oxley Act of 2002.
32.2	Certification of CFO pursuant to 18. U.S.C. Section 1350 as adopted, pursuant to Section 906 of Sarbanes-Oxley Act of 2002.

Exhibit 10.7

AMENDMENT NUMBER ONE TO CLINICAL TRIAL AGREEMENT

THIS AMENDMENT NUMBER ONE TO THE CLINICAL TRIAL AGREEMENT (the "Amendment") is effective 14 October 2009 ("Effective Date") The General Hospital Corporation d/b/a Massachusetts General Hospital, a not-for-profit corporation organized under the laws of Massachusetts with its principal place of business at 55 Fruit Street, Boston, MA 02114 ("Institution") and CytoDyn, Inc., a publicly traded corporation organized under the laws of Colorado with its principal place of business at 1511 Third Street, Santa Fe, New Mexico 87505 ("Company").

RECITALS

A. INSTITUTION has previously entered into a Clinical Trial Agreement to perform the study protocol entitled **"An observational study to determine the in-vitro immunologic and virology activity of Cytolin,"** with Company on 28 September 2009 (the "Agreement").

B. The parties now desire to amend the Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, INSTITUTION and Company agree as follows:

1. Except as expressly modified by this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. All terms used herein shall have the same meaning as ascribed to them in the Agreement. To the extent any term or provision of this First Amendment conflicts with any term or provision of the Agreement, the terms and provisions of this First Amendment shall prevail.

2. Section 11.2(a) shall be replaced in its entirety as follows:

   Company shall, at its sole cost and expense, procure and maintain policies of professional and general liability insurance in amounts not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) annual aggregate covering its obligations under this Agreement, including contractual liability coverage for its subject injury and indemnification obligations under this Section 11, if any.

3. This Amendment shall be made part of the Agreement and attached thereto.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the last date written below. The Effective Date of this Amendment shall be 14 October 2009.

ACCEPTED and AGREED:

The General Hospital Corporation

/s/ Jason McLaren
Jason McLaren, J.D., Pharm.D.
Agreement Associate

Date: 10/21/09

CytoDyn, Inc.

/s/ Allen D. Allen
Allen D. Allen
Chief Executive Officer

Date: October 14, 2009

Exhibit 10.8

AMENDMENT NUMBER TWO TO CLINICAL TRIAL AGREEMENT

THIS AMENDMENT NUMBER TWO TO THE CLINICAL TRIAL AGREEMENT (the "Amendment") is effective December 1, 2009 ("Effective Date") The General Hospital Corporation d/b/a Massachusetts General Hospital, a not-for-profit corporation organized under the laws of Massachusetts with its principal place of business at 55 Fruit Street, Boston, MA 02114 ("Institution") and CytoDyn, Inc., a publicly traded corporation organized under the laws of Colorado with its principal place of business at 1511 Third Street, Santa Fe, New Mexico 87505 ("Company").

RECITALS

A. INSTITUTION has previously entered into a Clinical Trial Agreement to perform the study protocol entitled **"An observational study to determine the in-vitro immunologic and virology activity of Cytolin,"** with Company on 28 September 2009 (the "Agreement") and amended it on October 14, 2009.

B. The parties now desire to further amend the Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, INSTITUTION and Company agree as follows:

1. Except as expressly modified by this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. All terms used herein shall have the same meaning as ascribed to them in the Agreement. To the extent any term or provision of this First Amendment conflicts with any term or provision of the Agreement, the terms and provisions of this First Amendment shall prevail.

2. Section 9.1 shall be replaced in its entirety as follows:

   General. Company agrees to support this Study with a research grant of three hundred sixteen thousand seven hundred and fifty-five Dollars ($340,570.00), inclusive of indirect costs, 50% to be paid upon execution of this Agreement, 25% to be paid by month three of the study, and 25% to be paid by month six of the study, all subject to the internal-controls division of the Sarbanes-Oxley Act.

3. This Amendment shall be made part of the Agreement and attached thereto.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the last date written below. The Effective Date of this Amendment shall be December 1, 2009.

READ and ACKNOWLEDGED

/s/ Eric Rosenberg, M.D.
Eric Rosenberg, M.D.

ACCEPTED and AGREED:

The General Hospital Corporation

/s/ Jason McLaren
Jason McLaren, J.D., Pharm.D.
Agreement Associate

Date: 12/14/09

CytoDyn, Inc.

/s/ Allen D. Allen
Allen D. Allen
Chief Executive Officer

Date: December 1, 2009

Exhibit 10.9

AMENDMENT NUMBER THREE TO CLINICAL TRIAL AGREEMENT

THIS AMENDMENT NUMBER THREE TO THE CLINICAL TRIAL AGREEMENT (the "Amendment") is effective March 1, 2010 ("Effective Date") The General Hospital Corporation d/b/a Massachusetts General Hospital, a not-for-profit corporation organized under the laws of Massachusetts with its principal place of business at 55 Fruit Street, Boston, MA 02114 ("Institution") and CytoDyn, Inc., a publicly traded corporation organized under the laws of Colorado with its principal place of business at 1511 Third Street, Santa Fe, New Mexico 87505 ("Company").

RECITALS

A. INSTITUTION has previously entered into a Clinical Trial Agreement to perform the study protocol entitled **"An observational study to determine the in-vitro immunologic and virology activity of Cytolin,"** with COMPANY on September 28, 2009 as amended on October 14, 2009 and December 1, 2009 (the "Agreement").

B. COMPANY has agreed to provide further funding to INSTITUTION for technical and nursing support so INSTITUTION may have two data points from the study by the end of the calendar year 2010 before the Study Drug has expired.

C. The parties now desire to further amend the Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, INSTITUTION and Company agree as follows:

1. Except as expressly modified by this Third Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. All terms used herein shall have the same meaning as ascribed to them in the Agreement. To the extent any term or provision of this Third Amendment conflicts with any term or provision of the Agreement, the terms and provisions of this Third Amendment shall prevail.

2. Section 9.1 shall be replaced in its entirety as follows:

   General. Company agrees to support this Study with a research grant of three hundred sixteen thousand seven hundred and fifty-five Dollars ($549,570.00), inclusive of indirect costs, 50% to be paid upon execution of this Agreement, 25% to be paid by month three of the study, and 25% to be paid by month six of the study, all subject to the internal-controls division of the Sarbanes-Oxley Act.

3. This Amendment shall be made part of the Agreement and attached thereto.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the last date written below. The Effective Date of this Amendment shall be March 1, 2010.

ACCEPTED and AGREED:

The General Hospital Corporation

/s/ Jason McLaren, J.D.
Jason McLaren, J.D., Pharm.D.
Agreement Associate
Date: March 8, 2010

CytoDyn, Inc.

/s/ Allen D. Allen
Allen D. Allen
Chief Executive Officer
Date: March 8, 2010

READ and ACKNOWLEDGED:

/s/ Eric Rosenberg, M.D.
Eric Rosenberg, M.D.

Exhibit 10.10

CYTODYN, INC.

2004 STOCK INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel, to provide additional incentives to Employees, Directors and Consultants and to promote the success of the Company's business.

2. Definitions. The following definitions shall apply as used herein and in the individual Award Agreements except as defined otherwise in an individual Award Agreement. In the event a term is separately defined in an individual Award Agreement, such definition shall supercede the definition contained in this Section 2.

(a) "Administrator" means the Board or any of the Committees appointed to administer the Plan.

(b) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act.

(c) "Applicable Laws" means the legal requirements relating to the Plan and the Awards under applicable provisions of federal and state securities laws, the corporate laws of California and, to the extent other than California, the corporate law of the state of the. Company's incorporation, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to Awards granted to residents therein.

(d) "Assumed" means that pursuant to a Corporate Transaction either (i) the Award is expressly affirmed by the Company or (ii) the contractual obligations represented by the Award are expressly assumed (and not simply by operation of law) by the successor entity or its Parent in connection with the Corporate Transaction with appropriate adjustments to the number and type of securities of the successor entity or its Parent subject to the Award and the exercise or purchase price thereof which at least preserves the compensation element of the Award existing at the time of the Corporate Transaction as determined in accordance with the instruments evidencing the agreement to assume the Award.

(e) "Award" means the grant of an Option, SAR, Dividend Equivalent Right, Restricted Stock, Restricted Stock Unit or other right or benefit under the Plan.

(f) "Award Agreement" means the written agreement evidencing the grant of an Award executed by the Company and the Grantee, including any amendments thereto.

(g) "Board" means the Board of Directors of the Company.

(h) "Cause" means, with respect to the termination by the Company or a Related Entity of the Grantee's Continuous Service, that such termination is for "Cause" as such term is expressly defined in a then-effective written agreement between the Grantee and the Company or such Related Entity, or in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator, the Grantee's: (i) failure to

substantially perform Grantee's duties after being notified of such failure (other than as a result of a Disability), (ii) commission of, conviction of, or plea of guilty or *nolo contendere* by Grantee to a charge of any felony under the laws of the United States or any state thereof or any crime involving moral turpitude or physical or emotional harm to any person (iii) dishonesty, intentional misconduct or material breach of any agreement with or fiduciary duty to the Company or a Related Entity, (iv) failure to abide by Company or Related Entity policies and procedures after being notified of such failure, whether or not any subsequent failure involves the same policies and procedures and/or (v) acting in an intentional manner which is reasonably likely to be materially detrimental or damaging to the Company's or a Related Entity's reputation, business, operations or relations with employees, suppliers or customers.

(i) "Change in Control" means a change in ownership or control of the Company effected through either of the following transactions:

(i) the direct or indirect acquisition by any person or related group of persons (other than an acquisition from or by the Company or by a Company-sponsored employee benefit plan or by a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's shareholders which a majority of the Continuing Directors who are not Affiliates or Associates of the offeror do not recommend such shareholders accept, or

(ii) a change in the composition of the Board over a period of 36 months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who are Continuing Directors.

(j) "Code" means the Internal Revenue Code of 1986, as amended.

(k) "Committee" means any committee composed of members of the Board appointed by the Board to administer the Plan.

(1) "Common Stock" means the common stock of the Company.

(m) "Company" means CytoDyn, Inc., a Colorado corporation, or any successor corporation that adopts the Plan in connection with a Corporate Transaction.

(n) "Consultant" means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a Director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.

(o) "Continuing Directors" means members of the Board who either (i) have been Board members continuously for a period of at least 36 months or (ii) have been Board members for less than 36 months and were elected or nominated for election as Board members by at least a majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.

(p) "Continuous Service" means that the provision of services to the Company or a Related Entity in any capacity of Employee, Director or Consultant is not interrupted or terminated. In jurisdictions requiring notice in advance of an effective termination as an Employee, Director or Consultant, Continuous Service shall be deemed terminated upon the actual cessation of providing services to the Company or a Related Entity notwithstanding any required notice period that must be fulfilled before a termination as an Employee, Director or Consultant can be effective under Applicable Laws. A Grantee's Continuous Service shall be deemed to have terminated either upon an actual termination of Continuous Service or upon the entity for which the Grantee provides services ceasing to be a Related Entity. Continuous Service shall not be considered interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entity, or any successor, in any capacity of Employee, Director or Consultant, or (iii) any change in status as long as the individual remains in the service of the Company or a Related Entity in any capacity of Employee, Director or Consultant (except as otherwise provided in the Award Agreement). An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave. For purposes of each Incentive Stock Option granted under the Plan, if such leave exceeds 90 days, and reemployment upon expiration of such leave is not guaranteed by statute or contract, then the Incentive Stock Option shall be treated as a Non-Qualified Stock Option on the day 3 months and 1 day following the expiration of such 90 day period.

(q) "Corporate Transaction" means any of the following transactions, provided, however, that the Administrator shall determine under parts (iv) and (v) whether multiple transactions are related, and its determination shall be final, binding and conclusive:

(i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;

(iii) the complete liquidation or dissolution of the Company;

(iv) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but (A) the shares of Common Stock outstanding immediately prior to such merger are converted or exchanged by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (B) in which securities possessing more than 40% of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger, but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction; or

(v) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the

Exchange Act) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction.

(r) "Covered Employee" means an Employee who is a "covered employee" under Section 162(m)(3) of the Code.

(s) "Director" means a member of the Board or the board of directors of any Related Entity.

(t) "Disability" means as defined under the long-term disability policy of the Company or the Related Entity to which the Grantee provides services regardless of whether the Grantee is covered by such policy. If the Company or the Related Entity to which the Grantee provides service does not have a long-term disability plan in place, "Disability" means that a Grantee is unable to carry out the responsibilities and functions of the position held by the Grantee by reason of any medically determinable physical or mental impairment for a period of not less than 90 consecutive days. A Grantee will not be considered to have incurred a Disability unless he or she furnishes proof of such impairment sufficient to satisfy the Administrator in its discretion.

(u) "Dividend Equivalent Right" means a right entitling the Grantee to compensation measured by dividends paid with respect to Common Stock.

(v) "Employee" means any person, including an Officer or Director, who is in the employ of the Company or any Related Entity, subject to the control and direction of the Company or any Related Entity as to both the work to be performed and the manner and method of performance. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute "employment" by the Company.

(w) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(x) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on the principal exchange or system on which the Common Stock is listed (as determined by the Administrator) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system or by such securities dealer on the date of determination, but if selling prices are not reported, the Fair

Market Value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock of the type described in (i) and (ii), above, the Fair Market Value thereof shall be determined by the Administrator in good faith and in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations which requires that consideration be given to (A) the price at which securities of reasonably comparable corporations (if any) in the same industry are being traded, or (B) if there are no securities of reasonably comparable corporations in the same industry being traded, the earnings history, book value and prospects of the issuer in light of market conditions generally.

(y) "Grantee" means an Employee, Director or Consultant who receives an Award under the Plan.

(z) "Immediate Family" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Grantee's household (other than a tenant or employee), a trust in which these persons (or the Grantee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Grantee) control the management of assets, and any other entity in which these persons (or the Grantee) own more than 50% of the voting interests.

(aa) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code

(bb) "Non-Qualified Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(cc) "Officer" means a person who is an officer of the Company or a Related Entity within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(dd) "Option" means an option to purchase Shares pursuant to an Award Agreement granted under the Plan.

(ee) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code.

(ff) "Performance-Based Compensation" means compensation qualifying as "performance-based compensation" under Section 162(m) of the Code.

(gg) "Plan" means this 2004 Stock Incentive Plan.

(a) "Post-Termination Exercise Period" means the period specified in the Award Agreement of not less than 30 days commencing on the date of termination (other than termination by the Company or any Related Entity for Cause) of the Grantee's Continuous Service, or such longer period as may be applicable upon death or Disability.

(hh) "Related Entity" means any Parent or Subsidiary of the Company and any business, corporation, partnership, limited liability company or other entity in which the Company or a Parent or a Subsidiary of the Company holds a substantial ownership interest, directly or indirectly.

(ii) "Replaced" means that pursuant to a Corporate Transaction the Award is replaced with a comparable stock award or a cash incentive program of the Company, the successor entity (if applicable) or Parent of either of them which preserves the compensation element of such Award existing at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same (or a more favorable) vesting schedule applicable to such Award. The determination of Award comparability shall be made by the Administrator and its determination shall be final, binding and conclusive.

(jj) "Restricted Stock" means Shares issued under the Plan to the Grantee for such consideration, if any, and subject to such restrictions on transfer, rights of first refusal, repurchase provisions, forfeiture provisions, and other terms and conditions as established by the Administrator.

(kk) "Restricted Stock Units" means an Award which may be earned in whole or in part upon the passage of time or the attainment of performance criteria established by the Administrator and which may be settled for cash, Shares or other securities or a combination of cash, Shares or other securities as established by the Administrator.

(11) "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act or any successor thereto.

(mm) "SAR" means a stock appreciation right entitling the Grantee to Shares or cash compensation, as established by the Administrator, measured by appreciation in the value of Common Stock.

(nn) "Share" means a share of the Common Stock.

(oo) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

(a) Subject to the provisions of Section 10, below, the maximum aggregate number of Shares which may be issued pursuant to all Awards (including Incentive Stock Options) is 1,600,000 Shares. The Shares to be issued pursuant to Awards may be authorized, but unissued, or reacquired Common Stock.

(b) Any Shares covered by an Award (or portion of an Award) which is forfeited, canceled or expires (whether voluntarily or involuntarily) shall be deemed not to have been issued for purposes of determining the maximum aggregate number of Shares which may be

issued under the Plan. Shares that actually have been issued under the Plan pursuant to an Award shall not be returned to the Plan and shall not become available for future issuance under the Plan, except that if unvested Shares are forfeited, or repurchased by the Company, such Shares shall become available for future grant under the Plan. To the extent not prohibited by Section 422(b)(1) of the Code (and the corresponding regulations thereunder), the listing requirements of The Nasdaq National Market (or other established stock exchange or national market system on which the Common Stock is traded) and Applicable Law, any Shares covered by an Award which are surrendered (i) in payment of the Award exercise or purchase price or (ii) in satisfaction of tax withholding obligations incident to the exercise of an Award shall be deemed not to have been issued for purposes of determining the maximum number of Shares which may be issued pursuant to all Awards under the Plan, unless otherwise determined by the Administrator.

4. Administration of the Plan.

(a) Plan Administrator.

(i) Administration with Respect to Directors and Officers. With respect to grants of Awards to Directors or Employees who are also Officers or Directors of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws and to permit such grants and related transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.

(ii) Administration With Respect to Consultants and Other Employees. With respect to grants of Awards to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.

(iii) Administration With Respect to Covered Employees. Notwithstanding the foregoing, grants of Awards to any Covered Employee intended to qualify as Performance-Based Compensation shall be made only by a Committee (or subcommittee of a Committee) which is comprised solely of two or more Directors eligible to serve on a committee making Awards qualifying as Performance-Based Compensation. In the case of such Awards granted to Covered Employees, references to the “Administrator” or to a “Committee” shall be deemed to be references to such Committee or subcommittee.

(iv) Administration Errors. In the event an Award is granted in a manner inconsistent with the provisions of this subsection (a), such Award shall be presumptively valid as of its grant date to the extent permitted by the Applicable Laws.

(v) Officer Authorization to Grant Awards. The Board may authorize one or more Officers to grant Awards subject to such limitations as the Board determines from time to time.

(vi) Multiple Administrative Bodies. The Plan may be administered by different bodies with respect to Directors, Officers, Consultants, and Employees who are neither Directors nor Officers.

(b) Powers of the Administrator. Subject to Applicable Laws and the provisions of the Plan (including any other powers given to the Administrator hereunder), and except as otherwise provided by the Board, the Administrator shall have the authority, in its discretion:

(i) to select the Employees, Directors and Consultants to whom Awards may be granted from time to time hereunder;

(ii) to determine whether and to what extent Awards are granted hereunder;

(iii) to determine the number of Shares or the amount of other consideration to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions of any Award granted hereunder;

(vi) to amend the terms of any outstanding Award granted under the Plan, provided that (A) any amendment that would adversely affect the Grantee's rights under an outstanding Award shall not be made without the Grantee's written consent, (B) the reduction of the exercise price of any Option awarded under the Plan shall be subject to shareholder approval and (C) canceling an Option at a time when its exercise price exceeds the Fair Market Value of the underlying Shares, in exchange for another Option, Restricted Stock, or other Award shall be subject to shareholder approval, unless the cancellation and exchange occurs in connection with a Corporate Transaction;

(vii) to construe and interpret the terms of the Plan and Awards, including without limitation, any notice of award or Award Agreement, granted pursuant to the Plan;

(viii) to grant Awards to Employees, Directors and Consultants employed outside the United States on such terms and conditions different from those specified in the Plan as may, in the judgment of the Administrator, be necessary or desirable to further the purpose of the Plan;

(ix) to take such other action, not inconsistent with the terms of the Plan, as the Administrator deems appropriate.

(c) Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or as Officers or Employees of the Company or a Related Entity, members of the Board and any Officers or Employees of the Company or a Related Entity to whom authority to act for the Board, the Administrator or the Company is delegated shall be defended and indemnified by the Company to the extent permitted by law on an after-tax basis against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any claim, investigation, action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any Award granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Company) or paid by them in satisfaction of a judgment in any such claim, investigation, action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such claim, investigation, action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct; provided, however, that within 30 days after the institution of such claim, investigation, action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at the Company's expense to defend the same.

5. Eligibility. Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants. Incentive Stock Options may be granted only to Employees of the Company or a Parent or a Subsidiary of the Company. An Employee, Director or Consultant who has been granted an Award may, if otherwise eligible, be granted additional Awards. Awards may be granted to such Employees, Directors or Consultants who are residing in non-U.S. jurisdictions as the Administrator may determine from time to time.

6. Terms and Conditions of Awards.

(a) Types of Awards. The Administrator is authorized under the Plan to award any type of arrangement to an Employee, Director or Consultant that is not inconsistent with the provisions of the Plan and that by its terms involves or might involve the issuance of (i) Shares, (ii) cash or (iii) an Option, a SAR, or similar right with a fixed or variable price related to the Fair Market Value of the Shares and with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions. Such awards include, without limitation, Options, SARs, sales or bonuses of Restricted Stock, Restricted Stock Units or Dividend Equivalent Rights, and an Award may consist of one such security or benefit, or 2 or more of them in any combination or alternative.

(b) Designation of Award. Each Award shall be designated in the Award Agreement. In the case of an Option, the Option shall be designated as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of Shares subject to Options designated as Incentive Stock Options which become exercisable for the first time by a Grantee during any calendar year (under all plans of the Company or any Parent or Subsidiary of the Company) exceeds $100,000, such excess Options, to the extent of the Shares covered thereby in excess of the foregoing limitation, shall be treated as Non-Qualified Stock Options. For this purpose, Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the grant date of the relevant Option.

(c) Conditions of Award. Subject to the terms of the Plan, the Administrator shall determine the provisions, terms, and conditions of each Award including, but not limited to, the Award vesting schedule, repurchase provisions, rights of first refusal, forfeiture provisions, form of payment (cash, Shares, or other consideration) upon settlement of the Award, payment contingencies, and satisfaction of any performance criteria. The performance criteria established by the Administrator may be based on any one of, or combination of, the following: (i) increase in share price, (ii) earnings per share, (iii) total shareholder return, (iv) operating margin, (v) gross margin, (vi) return on equity, (vii) return on assets, (viii) return on investment, (ix) operating income, (x) net operating income, (xi) pre-tax profit, (xii) cash flow, (xiii) revenue, (xiv) expenses, (xv) earnings before interest, taxes and depreciation, (xvi) economic value added and (xvii) market share. The performance criteria may be applicable to the Company, Related Entities and/or any individual business units of the Company or any Related Entity. Partial achievement of the specified criteria may result in a payment or vesting corresponding to the degree of achievement as specified in the Award Agreement.

(d) Acquisitions and Other Transactions. The Administrator may issue Awards under the Plan in settlement, assumption or substitution for, outstanding awards or obligations to grant future awards in connection with the Company or a Related Entity acquiring another entity, an interest in another entity or an additional interest in a Related Entity whether by merger, stock purchase, asset purchase or other form of transaction.

(e) Deferral of Award Payment. The Administrator may establish one or more programs under the Plan to permit selected Grantees the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Grantee to payment or receipt of Shares or other consideration under an Award. The Administrator may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Administrator deems advisable for the administration of any such deferral program.

(f) Separate Programs. The Administrator may establish one or more separate programs under the Plan for the purpose of issuing particular forms of Awards to one or more classes of Grantees on such terms and conditions as determined by the Administrator from time to time.

(g) Individual Limitations on Awards.

(i) Individual Limit for Options and SARs. The maximum number of Shares with respect to which Options and SARs may be granted to any Grantee in any fiscal year of the Company shall be 800,000 Shares. In connection with a Grantee's commencement of Continuous Service, a Grantee may be granted Options or SARs for up to an additional 600,000 Shares which shall not count against the limit set forth in the previous sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below. To the extent required by Section 162(m) of the Code or the regulations thereunder, in applying the foregoing limitations with respect to a Grantee, if any Option or SAR is canceled, the canceled Option or SAR shall continue to count

against the maximum number of Shares with respect to which Options and SARs may be granted to the Grantee. For this purpose, the repricing of an Option (or in the case of a SAR, the base amount on which the stock appreciation is calculated is reduced to reflect a reduction in the Fair Market Value of the Common Stock) shall be treated as the cancellation of the existing Option or SAR and the grant of a new Option or SAR.

(ii) Individual Limit for Restricted Stock and Restricted Stock Units. For awards of Restricted Stock and Restricted Stock Units that are intended to be Performance-Based Compensation, the maximum number of Shares with respect to which such Awards may be granted to any Grantee in any fiscal year of the Company shall be 800,000 Shares. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below.

(iii) Deferral. If the vesting or receipt of Shares under an Award is deferred to a later date, any amount (whether denominated in Shares or cash) paid in addition to the original number of Shares subject to such Award will not be treated as an increase in the number of Shares subject to the Award if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments such that the amount payable by the Company at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment).

(h) Early Exercise. The Award Agreement may, but need not, include a provision whereby the Grantee may elect at any time while an Employee, Director or Consultant to exercise any part or all of the Award prior to full vesting of the Award. Any unvested Shares received pursuant to such exercise may be subject to a repurchase right in favor of the Company or a Related Entity or to any other restriction the Administrator determines to be appropriate.

(i) Term of Award. The term of each Award shall be the term stated in the Award Agreement, provided, however, that the term of an Award shall be no more than 10 years from the date of grant thereof. However, in the case of an Incentive Stock Option granted to a Grantee who, at the time the Option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the term of the Incentive Stock Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Award Agreement. Notwithstanding the foregoing, the specified term of any Award shall not include any period for which the Grantee has elected to defer the receipt of the Shares or cash issuable pursuant to the Award.

(j) Transferability of Awards. Incentive Stock Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Grantee, only by the Grantee. Non-Qualified Stock Options and other Awards shall be transferable (i) by will or by the laws of descent and distribution, or (ii) to the extent and in the manner authorized by the Administrator by gift or pursuant to a domestic relations order to members of the Grantee's Immediate Family. Notwithstanding the foregoing, the Grantee may designate one or more beneficiaries of the Grantee's Award in the event of the Grantee's death on a beneficiary designation form provided by the Administrator.

(k) Time of Granting Awards. The date of grant of an Award shall for all purposes be the date on which the Administrator makes the determination to grant such Award, or such other date as is determined by the Administrator.

7. Award Exercise or Purchase Price, Consideration and Taxes.

(a) Exercise or Purchase Price. The exercise or purchase price, if any, for an Award shall be as follows:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than 85% of the Fair Market Value per Share on the date of grant.

(iii) In the case of the sale of Shares:

(A) granted to a person who, at the time of the grant of such Option, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any person other than a person described in the preceding paragraph, the per Share exercise price shall be not less than 85% of the Fair Market Value per Share on the date of grant.

(iv) In the case of Options or SARs intended to qualify as Performance-Based Compensation, the exercise or base appreciation amount shall be not less than 100% of the Fair Market Value per Share on the date of grant.

(v) In the case of other Awards, such price as is determined by the Administrator.

(vi) Notwithstanding the foregoing provisions of this Section 7(a), in the case of an Award issued pursuant to Section 6(d), above, the exercise or purchase price for the Award shall be determined in accordance with the provisions of the relevant instrument evidencing the agreement to issue such Award.

(b) Consideration. Subject to Applicable Laws, the consideration to be paid for the Shares to be issued upon exercise or purchase of an Award including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). In addition to any other types of consideration the Administrator may determine, the Administrator is authorized to accept as consideration for Shares issued under the Plan the following:

(i) cash;

(ii) check;

(iii) surrender of Shares or delivery of a properly executed form of attestation of ownership of Shares as the Administrator may require which have a Fair Market Value on the date of surrender or attestation equal to the aggregate exercise price of the Shares as to which said Award shall be exercised, provided, however, that Shares acquired under the Plan or any other equity compensation plan or agreement of the Company must have been held by the Grantee for a period of more than 6 months (and not used for another Award exercise by attestation during such period);

(iv) with respect to Options, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (A) shall provide written instructions to a Company designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares and (B) shall provide written directives to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm in order to complete the sale transaction; or

(v) any combination of the foregoing methods of payment.

The Administrator may at any time or from time to time, by adoption of or by amendment to the standard forms of Award Agreement described in Section 4(b)(iv), or by other means, grant Awards which do not permit all of the foregoing forms of consideration to be used in payment for the Shares or which otherwise restrict one or more forms of consideration.

(c) Taxes. No Shares shall be delivered under the Plan to any Grantee or other person until such Grantee or other person has made arrangements acceptable to the Administrator for the satisfaction of any non-U.S., federal, state, or local income and employment tax withholding obligations, including, without limitation, obligations incident to the receipt of Shares or the disqualifying disposition of Shares received on exercise of an Incentive Stock Option. Upon exercise of an Award the Company shall withhold or collect from Grantee an amount sufficient to satisfy such tax obligations.

8. Exercise of Award.

(a) Procedure for Exercise; Rights as a Shareholder.

(i) Any Award granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator under the terms of the Plan and specified in the Award Agreement but in the case of an Option, in no case at a rate of less than 20% per year over five years from the date the Option is granted, subject to reasonable conditions such as continued employment. Notwithstanding the foregoing, in the case of an Option granted to an Officer, Director or Consultant, the Award Agreement may provide that the Option may become exercisable, subject to reasonable conditions such as such Officer's, Director's or Consultant's Continuous Service, at any time or during any period established in the Award Agreement.

(ii) An Award shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Award by the person entitled to exercise the Award and full payment for the Shares with respect to which the Award is exercised has been made, including, to the extent selected, use of the broker-dealer sale and remittance procedure to pay the purchase price as provided in Section 7(b)(iv).

(b) Exercise of Award Following Termination of Continuous Service. In the event of termination of a Grantee's Continuous Service for any reason other than Disability or death (but not in the event of a Grantee's change of status from Employee to Consultant or from Consultant to Employee), such Grantee may, but only during the Post-Termination Exercise Period (but in no event later than the expiration date of the term of such Award as set forth in the Award Agreement), exercise the portion of the Grantee's Award that was vested at the date of such termination or such other portion of the Grantee's Award as may be determined by the Administrator. The Grantee's Award Agreement may provide that upon the termination of the Grantee's Continuous Service for Cause, the Grantee's right to exercise the Award shall terminate concurrently with the termination of Grantee's Continuous Service. In the event of a Grantee's change of status from Employee to Consultant, an Employee's Incentive Stock Option shall convert automatically to a Non-Qualified Stock Option on the day 3 months and one day following such change of status. To the extent that the Grantee's Award was unvested at the date of termination, or if the Grantee does not exercise the vested portion of the Grantee's Award within the Post-Termination Exercise Period, the Award shall terminate.

(c) Disability of Grantee. In the event of termination of a Grantee's Continuous Service as a result of his or her Disability, such Grantee may, but only within 12 months from the date of such termination (or such longer period as specified in the Award Agreement but in no event later than the expiration date of the term of such Award as set forth in the Award Agreement), exercise the portion of the Grantee's Award that was vested at the date of such termination; provided, however, that if such Disability is not a "disability" as such term is defined in Section 22(e)(3) of the Code, in the case of an Incentive Stock Option such Incentive Stock Option shall automatically convert to a Non-Qualified Stock Option on the day three

months and one day following such termination. To the extent that the Grantee's Award was unvested at the date of termination, or if Grantee does not exercise the vested portion of the Grantee's Award within the time specified herein, the Award shall terminate.

(d) Death of Grantee. In the event of a termination of the Grantee's Continuous Service as a result of his or her death, or in the event of the death of the Grantee during the Post-Termination Exercise Period or during the 12 month period following the Grantee's termination of Continuous Service as a result of his or her Disability, the Grantee's estate or a person who acquired the right to exercise the Award by bequest or inheritance may exercise the portion of the Grantee's Award that was vested as of the date of termination, within 12 months from the date of death (or such longer period as specified in the Award Agreement but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). To the extent that, at the time of death, the Grantee's Award was unvested, or if the Grantee's estate or a person who acquired the right to exercise the Award by bequest or inheritance does not exercise the vested portion of the Grantee's Award within the time specified herein, the Award shall terminate.

(e) Extension if Exercise Prevented by Law. Notwithstanding the foregoing, if the exercise of an Award within the applicable time periods set forth in this Section 8 is prevented by the provisions of Section 9 below, the Award shall remain exercisable until one month after the date the Grantee is notified by the Company that the Award is exercisable, but in any event no later than the expiration of the term of such Award as set forth in the Award Agreement.

9. Conditions Upon Issuance of Shares.

(a) Shares shall not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares pursuant thereto shall comply with all Applicable Laws, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws.

10. Adjustments Upon Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares covered by each outstanding Award, and the number of Shares which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan, the exercise or purchase price of each such outstanding Award, the maximum number of Shares with respect to which Awards may be granted to any Grantee in any fiscal year of the Company, as well as any other terms that the Administrator determines require adjustment shall be proportionately adjusted for (i) any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Shares, or similar transaction affecting the Shares, (ii) any other increase or decrease in the number of issued Shares effected

without receipt of consideration by the Company, or (iii) as the Administrator may determine in its discretion, any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator and its determination shall be final, binding and conclusive. Except as the Administrator determines, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the number or price of Shares subject to an Award.

11. Corporate Transactions and Changes in Control.

(a) Termination of Award to Extent Not Assumed in Corporate Transaction. Effective upon the consummation of a Corporate Transaction, all outstanding Awards under the Plan shall terminate. However, all such Awards shall not terminate to the extent they are Assumed in connection with the Corporate Transaction.

(b) Acceleration of Award Upon Corporate Transaction or Change in Control. The Administrator shall have the authority, exercisable either in advance of any actual or anticipated Corporate Transaction or Change in Control or at the time of an actual Corporate Transaction or Change in Control and exercisable at the time of the grant of an Award under the Plan or any time while an Award remains outstanding, to provide for the full or partial automatic vesting and exercisability of one or more outstanding unvested Awards under the Plan and the release from restrictions on transfer and repurchase or forfeiture rights of such Awards in connection with a Corporate Transaction or Change in Control, on such terms and conditions as the Administrator may specify. The Administrator also shall have the authority to condition any such Award vesting and exercisability or release from such limitations upon the subsequent termination of the Continuous Service of the Grantee within a specified period following the effective date of the Corporate Transaction or Change in Control. The Administrator may provide that any Awards so vested or released from such limitations in connection with a Change in Control, shall remain fully exercisable until the expiration or sooner termination of the Award.

(c) Effect of Acceleration on Incentive Stock Options. Any Incentive Stock Option accelerated under this Section 11 in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Stock Option under the Code only to the extent the $100,000 dollar limitation of Section 422(d) of the Code is not exceeded. To the extent such dollar limitation is exceeded, the excess Options shall be treated as Non-Qualified Stock Options.

12. Effective Date and Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the shareholders of the Company. It shall continue in effect for a term of 10 years unless sooner terminated. Subject to Section 17, below, and Applicable Laws, Awards may be granted under the Plan upon its becoming effective.

13. Amendment, Suspension or Termination of the Plan.

(a) The Board may at any time amend, suspend or terminate the Plan; provided, however, that no such amendment shall be made without the approval of the Company's shareholders to the extent such approval is required by Applicable Laws, or if such amendment would change any of the provisions of Section 4(b)(vi) or this Section 13(a).

(b) No Award may be granted during any suspension of the Plan or after termination of the Plan.

(c) No suspension or termination of the Plan (including termination of the Plan under Section 12, above) shall adversely affect any rights under Awards already granted to a Grantee.

14. Reservation of Shares.

(a) The Company, during the term of the Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

(b) The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

15. No Effect on Terms of Employment/Consulting Relationship. The Plan shall not confer upon any Grantee any right with respect to the Grantee's Continuous Service, nor shall it interfere in any way with his or her right or the right of the Company or any Related Entity to terminate the Grantee's Continuous Service at any time, with or without Cause, and with or without notice. The ability of the Company or any Related Entity to terminate the employment of a Grantee who is employed at will is in no way affected by its determination that the Grantee's Continuous Service has been terminated for Cause for the purposes of this Plan.

16. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Related Entity, Awards shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Related Entity, and shall not affect any benefits under any other benefit plan of any kind or any benefit plan subsequently instituted under which the availability or amount of benefits is related to level of compensation. The Plan is not a "Retirement Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

17. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company within 12 months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under Applicable Laws. Any Award exercised before shareholder approval is obtained shall be rescinded if shareholder approval is not obtained within the time prescribed, and Shares issued on the exercise of any such Award shall not be counted in determining whether shareholder approval is obtained.

18. Information to Grantees. The Company shall provide to each Grantee, during the period for which such Grantee has one or more Awards outstanding, copies of financial statements at least annually. The Company shall not be required to provide such information to persons whose duties in connection with the Company assure them access to equivalent information.

19. Unfunded Obligation. Grantees shall have the status of general unsecured creditors of the Company. Any amounts payable to Grantees pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. Neither the Company nor any Related Entity shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Grantee account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Related Entity and a Grantee, or otherwise create any vested or beneficial interest in any Grantee or the Grantee's creditors in any assets of the Company or a Related Entity. The Grantees shall have no claim against the Company or any Related Entity for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

20. Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

Volume Submitter 401(k) Profit Sharing Plan
Adoption Agreement

EMPLOYER INFORMATION

Name of Adopting Employer
CytoDyn Inc.

Office # - Client #
0072 - 0872PD18

Address
1511 3rd St.

City
Santa Fe

State **NM**

Zip **87505**

Telephone
505-988-5520

Adopting Employer's Federal Tax Identification Number
75-3056237

Adopting Employer's Tax Year End
12 / 31

Type of Business *(select one)*
☐**Sole Proprietorship** ☐**Partnership** ☑**C Corporation** ☐**S Corporation** ☐**LLC** ☐**Other**

Name of Plan
CytoDyn Inc. 40l(k) Profit Sharing Plan and Trust

Plan Sequence Number
001

Trust Identification Number *(if applicable)*
75-3056237

Account Number

Related Employers - If the Adopting Employer is part of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), a group of commonly controlled trades or businesses (as defined in Code Section 414(c) as modified by Code Section 415(h)) or an affiliated service group (as defined in Code Section 414(m)) of which the Adopting Employer is a part, or any other entity required to be aggregated with the Adopting Employer pursuant to Code Section 414(o), then such related employers will participate in this Plan only if listed on Attachment B, Participating Employer Form. Failure to include related employers may cause a violation of the coverage rules in Code Section 410(b). Additions to or deletions from Attachment B, Participating Employer Form do not constitute amendments to this Plan.

SECTION ONE: EFFECTIVE DATES

Complete Part A or B

Part A. ☑ **New Plan Effective Date**

This is the initial adoption of a 401(k) profit sharing plan by the Adopting Employer.
The Effective Date of this Plan is January 01, 20**10**.
The Effective Date for Elective Deferrals under this Plan, if different from above, is:

Pre-Tax Elective Deferrals *(select one)*

Option 1: ☐ The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date.

Option 2: ☑ **02 /10 /2010** *(Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date)*

NOTE: *If no option is selected, Option 1 will apply for Elective Deferrals.*

Roth Elective Deferrals *(select one)*

Option 1: ☐ The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date.

Option 2: ☑ **02 /10 /2010** *(Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date)*

NOTE: *If no option is selected, Option 1 will apply for Roth Elective Deferrals.*

NOTE: *The Effective Date is usually the first day of the Plan Year in which this Adoption Agreement is signed and may not be earlier than such date. Elective Deferrals, however, cannot be made available before the later of the date this Adoption Agreement is signed or the Effective Date for Elective Deferrals.*

Part B. ☐ **Existing Plan Amendment or Restatement Date**

This is an amendment or restatement of an existing qualified plan (a Prior Plan).

The Prior Plan was initially effective on .

The Effective Date of this amendment or restatement is **02 /10 /2010** *(except as, otherwise provided on Attachment C, Special Effective Date(s), if applicable, or in the Basic Plan Document).*

The Effective Date for Elective Deferrals under this Plan, if added by this amendment and different from above, is:

Pre-Tax Elective Deferrals *(select one)*

Option 1: ☐ The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date.

Option 2: ☐ *(Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date)*

NOTE: *If no option is selected, Option 1 will apply for Pre-Tax Elective Deferrals.*

Roth Elective Deferrals *(select one)*

Option 1: ☐ The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date.

Option 2: ☐ *(Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date)*

NOTE: *If no option is selected. Option 1 will apply for Roth Elective Deferrals.*

NOTE: *The restatement Effective Date is generally the first day of the Plan Year in which this Adoption Agreement is signed. An amendment or restatement Effective Date after the first day of the Plan Year in which this Adoption Agreement is signed may result in a reduction or elimination of accrued benefits, violating Code Section 411(d)(6). Notwithstanding the foregoing Effective Dates for certain items (e.g., EGTRRA and other government pronouncements) are governed by the dates specified in the Basic Plan Document. If Elective Deferrals are being made available for the first time as a result of this amendment or restatement, the Elective Deferrals cannot be made available before the later of the date this Adoption Agreement is signed or the Effective Date for Elective Deferrals. If different Effective Dates are selected for Pre-Tax and Roth Elective Deferrals, the Effective Date for Pre-Tax Elective Deferrals must be either the same date or an earlier date than that selected for Roth Elective Deferrals.*

SECTION TWO: ELIGIBILITY

Complete Parts A through G

NOTE: *Eligibility requirements selected for Elective Deferrals will also apply to Qualified Nonelective Contributions, if such contributions are made to the Plan Eligibility requirements selected for Matching Contributions will apply to Qualified Matching Contributions, if such contributions are made to the Plan.*

Part A Age and Years of Eligibility Service

1. **Age Requirement.** An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals), receiving Matching Contributions, or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement, after attaining the following age *(select and complete all that apply):*

   ☑ Elective Deferrals – Age **21** *(no more than 21).*

   ☑ Matching Contributions – Age **21** *(no more than 21).*

   ☑ Employer Profit Sharing Contributions – Age **21** *(no more than 21).*

   NOTE: *If no age is specified for a contribution source there will be no age requirement for such source.*

2. **Years of Eligibility Service Requirement.** An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals), receiving Matching Contributions, or receiving an allocation of any Employer Profit Sharing Contributions as applicable, made pursuant to Section Three of the Adoption Agreement *(select and complete all that apply):*

   ☐ No Eligibility Service Required.

   If this option is selected, there will be no eligibility service requirement for the following contributions *(select all that apply):*

   ☐ Elective Deferrals.

   ☐ Matching Contributions.

   ☐ Employer Profit Sharing Contributions.

   ☑ After completing **03** consecutive Months of Eligibility Service *(no more than 12).*

   If this option is selected, an Employee will be eligible to become a Participant in the Plan for purposes of the following contributions after completing the Months of Eligibility Service specified above *(select all that apply):*

   ☑ Elective Deferrals.

   ☑ Matching Contributions.

   ☐ Employer Profit Sharing Contributions.

   ☐ After completing consecutive Months of Eligibility Service *(no more than 12)* during which the Employee completes at least **0** Hours of Service *(no more than 1000).*

   NOTE: *Employees not meeting the hours requirement within the initial number of months indicated in the Adoption Agreement will satisfy the Month of Eligibility Service requirement when they complete 1,000 Hours of Service within the Eligibility Computation Period.*

   If this option is selected, an Employee will be eligible to become a Participant in the Plan for purposes of the

following contributions after completing the Months of Eligibility Service and Hours of Service specified above *(select all that apply):*

☐ Elective Deferrals.

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

After Completing 1 Year of Eligibility Service.

☑ If this option is selected, an Employee will be eligible to become a Participant in the Plan for purposes of the following contributions after completing one Year of Eligibility Service *(select all that apply):*

☐ Elective Deferrals.

☐ Matching Contributions.

☑ Employer Profit Sharing Contributions.

☐ After completing 2 Years of Eligibility Service.

If this option is selected, an Employee will be eligible to become a Participant in the Plan for purposes of the following contributions after completing 2 Years of Eligibility Service *(select all that apply).*

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

☐ Other.

If this option is selected, an Employee will be eligible to become a Participant in the Plan for purposes of the following contributions after completing the following requirements *(select and complete all that apply):*

☐ Elective Deferrals *(Cannot require more than 1 Year of Eligibility Service).*

☐ Matching Contributions *(Cannot require more than 2 Years of Eligibility Service)* **months**.

☐ Employer Profit Sharing Contributions *(Cannot require more than 2 Years of Eligibility Service)* **months**.

NOTE: *If no Year of Eligibility Service requirement is selected for a contribution source, an Employee will become eligible to become a Participant upon date of hire with respect to such source. A Participant cannot be required to complete more than one Year of Eligibility Service for Elective Deferrals or two Years of Eligibility Service for Matching Contributions and Employer Profit Sharing Contributions. If more than one Year of Eligibility Service is selected in this Section Two, Part A for either Matching Contributions or Employer Profit Sharing Contributions, the immediate 100 percent vesting schedule in Section Four will automatically apply to such contribution source.*

3. Age and Years of Eligibility Service Waivers

a. Employees Employed as of the Effective Date

Will an Employee (other than an Employee who either is part of an excluded class of Employees or is employed by a related employer that does not participate in the Plan) employed as of the Effective Date(s) listed in Section One, Part A, of the Adoption Agreement who has not otherwise met the age and Years of Eligibility Service requirements listed above be considered to have met those requirements as of the Effective Date and be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals), receiving Matching Contributions, or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected. Option 2 will apply.*

b. Employees Employed as of a Specified Date

Will an Employee (other than an Employee who either is part of an excluded class of Employees or is employed by a related employer that does not participate in the Plan) employed on **02 /10 /2010** *(specify a month, day, and year)* who has not otherwise met the age and Years of Eligibility Service requirements be considered to have met those requirements and be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals), receiving Matching Contributions, or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ Not applicable.

NOTE: *If no option is selected, Option 2 will apply. If Option 1 is selected but no date is specified, no additional age and Years of Eligibility Service waivers will apply. This age and Years of Eligibility Service waiver may be used either when this Plan is adopted or when the Plan is subsequently amended (e.g., to add one or more types of contribution, to add a previously excluded group of Employees, etc.).*

c. Mergers and Acquisitions

Will an Employee (other than an Employee who either is part of an excluded class of Employees or is employed by a related employer that does not participate in the Plan) employed on *(specify a month, day, and year)* who 1) became an Employee as a result of a merger with or acquisition of the prior employer(s) listed below and 2) has not otherwise met the age and Years of Eligibility Service requirements be considered to have met those requirements and be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals), receiving Matching Contributions, or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement *(select one)*?

Option 1: ☐ Yes.

Prior Employer(s): _____

Option 2: ☑ Not applicable.

NOTE: *If no option is selected, Option 2 will apply. If Option 1 is selected but no date is specified, no additional age and Years of Eligibility Service waivers will apply. This age and Years of Eligibility Service waiver may be used either when this Plan is adopted or when a merger or acquisition occurs. Waivers that include only Employees from certain prior employers may create testing implications under Code Sections 401(a)(4) or 410(b).*

Part B. Exclusion of Certain Classes of Employees

An Employee will be eligible to become a Participant in the Plan unless such Employee is *(select all that apply):*

☑ a. Included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives, if retirement benefits were the subject of good faith bargaining and if two percent or less of the Employees who are covered pursuant to that agreement are professionals as defined in Treasury Regulation Section 1.410(b)-9. For this purpose, the term "Employee representatives" does not include any organization in which more than half of the members are Employees who are owners, officers, or executives of the Employer.

☐ b. Not included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives, if retirement benefits were the subject of good faith bargaining and if two percent or less of the Employees who are covered pursuant to that agreement are professionals as defined in Treasury Regulation Section 1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are Employees who are owners, officers, or executives of the Employer.

☑ c. A nonresident alien (within the meaning of Code Section 7701(b)(1)(B)) who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)).

☑ d. An Employee as the result of a transaction described in Code Section 410(b)(6)(C). Such Employee will be excluded during the period beginning on the date of the change in the member(s) of the group and ending on the last day of the first Plan Year beginning after the date of the change. A transaction described in Code Section 410(b)(6)(C) is an asset or stock acquisition, merger, or similar transaction involving a change in the employer of the employees of a trade or business.

☐ e. A Leased Employee.

☐ f. A Highly Compensated Employee.

☐ g. An Employee incorrectly determined not to be an Employee (e.g., erroneously classified as an independent contractor).

☐ h. Other (Describe the classification(s) of Employees that will be excluded from the Plan. Classifications cannot be based on time, service or Compensation)

_____

_____

NOTE: *A related employer will be excluded from the Plan unless such employer signs a Participating Employer Form.*

NOTE: *Exclusions of Employees (other than statutorily excluded Employees under Code Section 410(b)(3) and (4) may result in the Plan needing to be amended to include enough Employees to pass the minimum coverage requirements under Code Section 410(b).*

NOTE: *If item a, is selected, then item b may not be selected. If Item b is selected item a may not be selected. If both item a and b are selected, the Plan will operate as if item b had not been selected.*

Part C. Entry Dates

The Entry Dates shall be *(select one)*:

Option 1: ☑ Immediately upon meeting age and Years of Eligibility Service - The day the age and Years of Eligibility Service requirements in Section Two, Part A, are satisfied.

Option 2: ☐ Monthly – The first day of each month of the Plan Year.

Option 3: ☐ Quarterly – The first day of the Plan Year and the first day of the fourth, seventh and tenth months of the Plan Year.

Option 4: ☐ Semi-Annually – The first day of the Plan Year and the first day of the seventh month of the Plan Year.

Option 5: ☐ Annually – The first day of the Plan Year.

Option 6: ☐ Other *(define Entry Date(s))* .

NOTE: *If no option is selected. Option 4 will apply. Option 5 or Option 6 can be selected only if the eligibility requirements and Entry Dates are coordinated such that each Employee will become a Participant in the Plan the earlier of 1) the first day of the Plan Year beginning after the date the Employee satisfies the age and Years of Eligibility Service requirements of Code Section 410(a) and ERISA Section 202, or 2) six months after the date the Employee satisfies such requirements.*

Part D. Hours Required For Eligibility Purposes

1. **1,000** Hours of Service *(no more than 1,000)* shall be required to constitute a Year of Eligibility Service.

2. **500** Hours of Service *(no more than 500 and less than the number specified in Part D, item 1, above)* must be exceeded to

avoid a Break in Eligibility Service.

NOTE: *If no hours are specified, 1,000 and 500 will apply for items 1 and 2, respectively unless the Elapsed Time method of determining service applies.*

Part E. Eligibility Computation Period

An Employee's Eligibility Computation Periods after their initial Eligibility Computation Period shall be *(select one)*:

Option 1: ☑ Each Plan Year commencing with the Plan Year beginning during their initial Eligibility Computation Period.

Option 2: ☐ The 12-consecutive month periods commencing on the anniversaries of their Employment Commencement Date.

NOTE: *If no option is selected, Option 1 will apply.*

Part F. Participation Following Breaks in Service

Will the rehire hold-out rule described in Plan Section 2.04(C) apply for purposes of determining eligibility *(select one)*?

Option 1: ☐ **Yes.**

Option 2: ☑ **No.**

NOTE: *If no option is selected, Option 2 will apply.*

Part G. Election Not To Participate

May an Employee or a Participant elect not to participate in this Plan pursuant to Section 2.07 of the Plan?

Option 1: ☐ **Yes.**

Option 2: ☑ **No.**

NOTE: *If no option is selected, Option 2 will apply.*

SECTION THREE: CONTRIBUTIONS

Complete Parts A through I

Part A. Elective Deferrals

1. Authorization of Elective Deferrals

Will Elective Deferrals be permitted under this Plan *(select one)*?

Option 1: ☑ Yes *(complete the following)*:

Will Roth Elective Deferrals be permitted under this Plan in addition to Pre-Tax Elective Deferrals?

Suboption 1: ☑ Yes.

Suboption 2: ☐ No.

NOTE: *If no suboption is selected, Suboption 1 will apply.*

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply. Complete the relevant portions of the remainder of Part A only if Option 1 is selected.*

2. Limits on Elective Deferrals

If Elective Deferrals are permitted under the Plan, a Contributing Participant may elect under a salary reduction agreement to have their Compensation reduced by the amount described below. Such amount shall be contributed to the Plan by the Employer on behalf of the Contributing Participant *(select one)*:

Option 1: ☑ An amount equal to a percentage of the Contributing Participant's Compensation from **0** percent to **92** percent in increments of **1** percent.

Option 2: ☐ An amount of the Contributing Participant's Compensation not less than $ and not more than $.

Option 3: ☐ An amount equal to a percentage of the Contributing Participant's Compensation from percent to percent in increments of percent or an amount of the Contributing Participant's Compensation not less than $ and not more than $.

Option 4: ☐ An amount equal to a dollar amount or percentage of the Contributing Participant's Compensation not to exceed the limits imposed by Code Sections 401(k), 402(g), 404, and 415.

For any taxable year, a Contributing Participant's combined Pre-Tax and Roth Elective Deferrals shall not exceed the limit contained in Code Section 402(g) in effect at the beginning of such taxable year.

NOTE: *If no option is selected, Option 4 will apply. Unless specified otherwise in the Adoption Agreement, bonuses shall be included in Compensation and will, therefore, be subject to a Participant's salary reduction agreement.*

3. Separate Deferral Election for Bonuses

Instead of or in addition to making Elective Deferrals through payroll deduction, may a Contributing Participant make a separate deferral election on part or all of a bonus rather than applying the Contributing Participant's salary reduction agreement for Pre-Tax and/or Roth Elective Deferrals, if any, to the bonus *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply. A separate deferral election made with respect to a bonus shall not be subject to the limits described under the portion of this Adoption Agreement titled "Limits on Elective Deferrals" unless such limits are prescribed by the Code or related Treasury Regulations.*

4. Catch-up Contributions

Will eligible Contributing Participants be permitted to make Catch-up Contributions pursuant to Plan Section 3.01(G) *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

5. Claiming Excess Elective Deferrals

A Participant who claims Excess Elective Deferrals for the preceding calendar year must submit their claim in writing to the Plan Administrator by *(select one)*:

Option 1: ☐ March 1.

Option 2: ☑ Other (specify a date not later than April 15)_____**April 15**_____**.**

NOTE: *If no option is selected, Option 1 will apply. If Excess Elective Deferrals are not removed by April 15, they will be includible in income when distributed and may be subject to a 10% early distribution penalty under Code Section 72(t).*

6. Automatic Enrollment for Elective Deferrals

a. Authorization of Automatic Elective Deferrals

Will the Automatic Elective Deferral enrollment Provisions in Plan Section 3.01(E) apply *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply. Complete the remainder of this item 6 only if Option 1 is selected.*

i. New Employees

If an Employee who has met the eligibility requirements set forth in Section Two of the Adoption Agreement fails to provide the Employer a salary reduction agreement, will a portion of such eligible Employee's Compensation be automatically withheld and contributed to the Plan as an Elective Deferral *(select one)*?

Option 1: ☐ Yes, for Employees hired on or after the Effective Date.

Option 2: ☐ Yes, for Employees who meet the eligibility requirements in Section Two. Part A of the Adoption Agreement on or after the Effective Date.

Option 3: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

ii. Current Employees

Will automatic enrollment for Elective Deferrals apply to all eligible Employees who fail to return a salary reduction agreement on or after the Effective Date, including those who met the eligibility requirements in the Adoption Agreement before the Effective Date *(select one)*?

Option 1: ☐ Yes, but only to those Employees who are not Contributing Participants (i.e., are deferring 0 percent).

Option 2: ☐ Yes, but only to those Employees deferring less than the amount in item (b) below (including 0 percent).

Option 3: ☐ No.

NOTE: *If no option is selected, Option 3 will apply.*

b. Initial Amount of Automatic Elective Deferral

The following percentage or amount of each eligible Employee's Compensation will be automatically withheld and contributed to the Plan as an Elective Deferral if Option 1 was selected in item 6(a) above *(select and complete one)*:

Option 1: ☐ Percent.

Option 2: ☐ $.

NOTE: *If no option is selected, Option 1 will apply and three percent of Compensation will be withheld.*

c. Tax Character of Elective Deferrals – Automatic Enrollment

How will amounts automatically withheld from Compensation and contributed to the Plan under Part A, item 6 above as Elective Deferrals be designated for tax purposes *(select one)*?

Option 1: ☐ Pre-tax Elective Deferrals.

Option 2: ☐ Roth Elective Deferrals.

NOTE: *If no option is selected, Option 1 will apply. Option 2 may only be selected if Section Three, Part A of the Adoption Agreement allows Roth Elective Deferrals.*

7. Automatic Increase in Elective Deferrals

a. Authorization of Automatic Elective Deferral Increase

Will Elective Deferrals be increased automatically each year for Employees who are automatically enrolled under item 6 above *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply. Complete the remainder of this item 7 only if Option 1 is selected.*

b. Will Elective Deferrals be increased automatically each year for Employees whose deferral elections are below percent *(specify a percentage)*, whether or not automatically enrolled under item 6 above?

Option 1: ☐ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply. If Option 1 is selected and no percentage is indicated, three percent will apply.*

c. Automatic Elective Deferral Increase Amount

If Option 1 was selected in item 7(a) and/or 7(b) above, such increases will occur in the following increments *(select one):*

Option 1: ☐ **1** percent per year up to a maximum of **10** percent.

Option 2: ☐ $ per year up to a maximum amount of $.

Option 3: ☐ Other *(specify)*.

NOTE: *If no option is selected, Option 1 will apply and annual increases will be made in increments of one percent of Compensation up to a maximum of ten percent.*

d. Timing of Automatic Elective Deferral Increases

If automatic increases are selected in item 7(a) and/or 7(b) above, such increases will occur on the following dates *(select one)*:

Option 1: ☐ Each anniversary of the Contributing Participant's date of hire.

Option 2: ☐ Each anniversary of the date the Contributing Participant met the eligibility requirements set forth in Section Two. Part A of the Adoption Agreement.

Option 3: ☐ First day of each Plan Year.

Option 4: ☐ First day of each Calendar Year.

Option 5: ☐ Other *(specify)* / .

NOTE: *If no option is selected, Option 1 will apply.*

Part B. Matching Contributions *(Employers that intend to maintain an ADP/ACP Safe Harbor CODA plan, as defined in Plan Section 3.03 that is not subject to ACP testing, must skip this Part B and complete Part C. Matching Contributions made under this Part B will be subject to ACP testing).*

1. Authorization of Matching Contributions

Will the Employer make Matching Contributions to the Plan on behalf of a Qualifying Contributing Participant *(select one)*?

Option 1: ☐ Yes, with respect to the following types of contributions *(select all that apply)*:

☑ Elective Deferrals.

☐ Nondeductible Employee Contributions.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply. Complete the remainder of this Part B only if Option 1 is selected.*

2. Matching Contributions and Catch-up Contributions

Will Matching Contributions be made, in accordance with the Matching Contribution formula specified in items 3 and 4 below with regard to Catch-up Contributions *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

3. Matching Contribution Formula

If the Employer elected to make Matching Contributions in item 1 above, then the amount of such Matching Contributions made on behalf of a Qualifying Contributing Participant each Plan Year shall be equal to *(select one)*:

Option 1:☐ Discretionary Match.

That percentage of each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) which the Employer, in its sole discretion, determines from year to year. The amount, the allocation formula, and the percentage or dollar amount limit applicable to such match, if any, is at the complete and sole discretion of the Employer and may vary from year to year. Any Matching Contribution will be allocated in a nondiscriminatory manner based upon each Contributing Participant's Elective Deferrals (and/or Nondeductible Employee Contributions, if applicable).

Option 2:☐ Percentage of Contribution Match.

That percentage of each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the Contributing Participant's rate of Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) as specified in the matching schedule below.

Elective Deferral Percentage	Matching Percentage
Less than or equal to %	%

Notwithstanding the Matching Contribution formula specified above, no Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s). if any)*

Option 3: ☐ Two-Tiered Percentage of Contribution Match.

That percentage of each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the Contributing Participant's rate of Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) as specified in the matching schedule below.

	Elective Deferral Percentage	Matching Percentage
Base Rate	Less than or equal to %	%
Tier 2	Greater than , but less than or equal to %	%

Notwithstanding the Matching Contribution formula specified above, no Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s), if any)*

Option 4: ☐ Multi-Tiered Percentage of Contribution Match.

An amount equal to a percentage of each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the Contributing Participant's rate of Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) as specified in the matching schedule below.

	Elective Deferral Percentage	Matching Percentage
Base Rate	Less than or equal to %	%
Tier 2	Greater than , but less than or equal to %	%
Tier 3	Greater than , but less than or equal to %	%
Tier 4	Greater than %	%

Notwithstanding the Matching Contribution formula specified above, no Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s), if any)*

Option 5: ☐ Years of Service Match.

An amount equal to a percentage of each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the number of such Contributing Participant's Years of ☐ Eligibility ☐ Vesting Service with the Employer as specified in the matching schedule below.

	Years of Service	Matching Percentage
Base Rate	Less than or equal to years	%
Tier 2	Greater than , but less than or equal to years	%
Tier 3	Greater than , but less than or equal to years	%
Tier 4	Greater than years	%

Notwithstanding the Matching Contribution formula specified above, no Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s), if any)*

Option 6: ☐ Discretionary Match By Location or Business Classification.

Any Matching Contribution will be allocated in a nondiscriminatory manner based upon each Qualifying Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) which the Employer, in its sole discretion, determines from year to year for each separate location or business classification. The amount, the allocation formula, and the percentage or dollar amount limit applicable to such match, if any, is at the complete discretion of the Employer and may vary for each location or business classification on a separate and individual basis.

Option 7: ☐ Other formula *(Specify an amount equal to a percentage of the Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) of each Qualifying Contributing Participant entitled thereto)*

.

NOTE: *If no option is selected, Option 1 will apply. If Matching Contribution percentages in Options 3 through 7 above increase as the percentage of a Contributing Participant's Elective Deferral percentage increases (i.e., the Matching Contribution Percentage in Tier 3 may not exceed the number in Tier 2, the Matching Contribution Percentage in Tier 4 may not exceed the number in Tier3, etc.), special nondiscrimination testing under Code Section 401(a)(4) may be necessary. If Option 7 is selected, the formula specified can only allow Matching Contributions to be made with respect to a Contributing Participant's Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable). Matching Contributions in excess of 100% of a Contributing Participant's Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) will be subject to the additional ACP testing limits under Plan Section 3.02 and Treasury Regulation Section 1.401(m)-2(a)(5).*

4. Supplemental Match

Will the Employer be permitted to make supplemental Matching Contributions, in an amount to be determined from year to year at the Employer's discretion, in addition to the Matching Contributions described in Part B, items 2 and 3 above*(select one)?*

Option 1: ☐ Yes.

If Option 1 is selected the supplemental Matching Contributions will be allocated to each Contributing Participant in accordance with the following Matching Contribution formula *(select one)*:

Subption a: ☐ Discretionary Match. That percentage of each Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) which the Employer, in its sole discretion, determines from year to year.

Subption b: ☐ Other *(specify)* .

NOTE: *Matching Contributions in excess of 100% of a Contributing Participant's Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) will be subject to the additional ACP testing limits under Plan Section 3.02 and Treasury Regulation Section 1.401(m)-2(a)(5).*

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

5. Matching Contribution Computation Period

For purposes of applying the Matching Contribution formula. Compensation will be based on the period selected below *(select one):*

Option 1: ☐ Payroll period

Option 2: ☐ Plan Year

Option 3: ☐ Calendar Month

Option 4: ☐ Plan Year Quarter

Option 5: ☐ Semi-annual

NOTE: *The calculation of a Matching Contribution based on the computation period selected shall not require the Employer to remit the Matching Contribution to the Trust earlier than the time required by Plan Section 3.04(D).*

6. Qualifying Contributing Participants

A Contributing Participant will be a Qualifying Contributing Participant, and thus entitled to share in Matching Contributions for any Plan Year, only if the Participant has satisfied all of the eligibility requirements described in Section Two of this Adoption Agreement on at least one day of such Plan Year and satisfies the following additional conditions *(select one)*:

Option 1: ☐ Hours of Service Requirement. The Contributing Participant completes at least (not more than 1.000) Hours of Service during the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply)*:

- ☐ The Contributing Participant's Death.
- ☐ The Contributing Participant's Termination of Employment after having incurred a Disability.
- ☐ The Contributing Participant's Termination of Employment after having reached Normal Retirement Age.
- ☐ The Contributing Participant's Termination of Employment after having reached Early Retirement Age.
- ☐ The Contributing Participant is employed on the last day of the Plan Year.

☐ Last Day Requirement. The Participant is an Employee of the Employer on the last day of the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply)*:

- ☐ The Contributing Participant's Death.
- ☐ The Contributing Participant's Termination of Employment after having incurred a Disability.
- ☐ The Contributing Participant's Termination of Employment after having reached Normal Retirement Age.
- ☐ The Contributing Participant's Termination of Employment after having reached Early Retirement Age.
- ☐ The Contributing Participant's Termination of Employment after having completed at least Hours of Service during the Plan Year.

Option 2: ☑ No additional conditions apply.

NOTE: *If no option is selected, Option 2 will apply.*

Part C. Safe Harbor CODA Contributions

1. Application of Safe Harbor CODA

a. Safe Harbor Provisions

Will the Safe Harbor CODA provisions of Plan Section 3.03 apply *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 2 will apply. Complete the remainder of this Part C only if Option 1 is selected. If Option 1 is selected, the Safe Harbor CODA provisions of the Plan will apply for the Plan Year and the provisions relating to the ADP or ACP test generally will not apply. Contribution provisions that are selected in*

addition to the options listed in this Part C may subject the Plan to ADP, ACP, and top heavy testing. A Plan intending to satisfy the Safe Harbor CODA requirements of Code Sections 401(k)(12) and 401(m)(11) generally must satisfy such requirements, including the notice requirement, for the entire Plan Year. If a Safe Harbor CODA is eliminated during a Plan Year, the Plan will be subject to provisions relating to the ADP and ACP tests, including restrictions on the selection of testing methods (e.g., current vs. prior year).

b. Participants Entitled to Receive Safe Harbor CODA Contributions

Safe Harbor CODA contributions will be made on behalf of *(select one):*

Option 1: ☐ Each Eligible Employee who is a non-Highly Compensated Employee (and, in the case of Safe Harbor Matching Contributions, makes Elective Deferrals to the Plan).

Option 2: ☑ All Eligible Employees (who, in the case of Safe Harbor Matching Contributions, make Elective Deferrals to the Plan).

NOTE: *If no option is selected Option 2 will apply.*

2. ADP Test Safe Harbor Contributions

The Employer will make the following ADP Test Safe Harbor Contributions for the Plan Year *(select one)*:

Option 1: ☐ Basic Matching Contributions.

The Employer will make Matching Contributions to the Individual Account of each Eligible Employee, as described in item 1(b) above, equal to:

(i) 100 percent of the amount of the Employee's Elective Deferrals that do not exceed three percent of the Employee's Compensation for the Plan Year, plus

(ii) 50 percent of the amount of the Employee's Elective Deferrals that exceed three percent of the Employee's Compensation but do not exceed five percent of the Employee's Compensation.

Option 2: ☐ Enhanced Matching Contributions.

The Employer will make Matching Contributions to the Individual Account of each Eligible Employee, as described in item 1(b) above, in an amount equal to the sum of:

		Elective Deferral Percentage	Matching Percentage
Base Rate	Less than or equal to	*% (not less than 3%)*	100%
Tier 2	Greater than , but less than or equal to	*% (not greater than 6%)*	%

NOTE: *The Enhanced Matching Contribution formula must be completed so that, at any rate of Elective Deferrals, the Matching Contribution is at least equal to the Matching Contribution that would be received if the Employer were making Basic Matching Contributions, but the rate of match cannot increase as Elective Deferrals increase.*

Option 3: ☑ Safe Harbor Nonelective Contributions

The Employer will make a Safe Harbor Nonelective Contribution to the Individual Account of each Eligible Employee, as described in item 1(b) above, in an amount equal to **3** *(not less than 3)* percent of the Employee's Compensation for the Plan Year.

NOTE: *If no option is selected, Option 1 will apply.*

3. Recipient Plan

The ADP Test Safe Harbor Contributions will be made to *(select one)*:

Option 1: ☑ This Plan.

Option 2: ☐ Other plan *(specify plan of the Employer)* _____.

NOTE: *If no option is selected, Option 1 will apply.*

4. ACP Test Safe Harbor Matching Contributions

NOTE: *No additional contributions are required in order to satisfy the Safe Harbor CODA requirements. The Employer may, however, make Matching Contributions in addition to Basic or Enhanced Matching Contributions. To ensure that the Plan continues to satisfy the Safe Harbor CODA requirements, only the following additional Matching Contributions may be made (see the NOTE below for specific contribution limitations).*

For the Plan Year, the Employer will make ACP Test Safe Harbor Matching Contributions to the Individual Account of each Eligible Employee, as described in item 1(b) above, in the amount of *(select one)*:

Option 1: ☐ Percentage of Contribution Match.

A Matching Contribution that equals percent of the Employee's Elective Deferrals that do not exceed percent *(not more than six percent)* of the Employee's Compensation for the Plan Year.

Option 2: ☐ Two-Tiered Percentage of Contribution Match.

That percentage of each Contributing Participant's Elective Deferral determined by the Contributing Participant's rate of Elective Deferral as specified in the matching schedule below.

	Elective Deferral Percentage	Matching Percentage
Base Rate	Less than or equal to %	%
Tier 2	Greater than , but less than or equal to %	%

NOTE: *The matching percentage for Tier 2 cannot exceed the matching percentage for the base rate. No Matching Contributions will be made on Elective Deferrals that exceed six percent of Compensation.*

Option 3: ☐ A discretionary contribution that matches those Employee's Elective Deferrals that do not exceed a permissible percentage of the Employee's Compensation for the Plan Year.

NOTE: *The Elective Deferrals that are matched will be determined by the Employer for the year, but in no event can a Matching Contribution be made on Elective Deferrals that exceed six percent of the Employees Compensation. In addition, the total additional discretionary Matching Contribution made to any Employee cannot exceed four percent of the Employee's Compensation for the Plan Year. For example, the Employer could not choose a discretionary formula that provided a 25 cent Matching Contribution for every dollar deferred if the match were given on Elective Deferrals up to eight percent of Compensation (this exceeds the six percent limitation on Elective Deferrals that can be matched). Neither could the Employer provide a discretionary dollar-for-dollar Matching Contribution on Elective Deferrals up to six percent of Compensation (this exceeds the four percent absolute limitation on a discretionary ACP Test Safe Harbor Matching Contribution). If the Employer wishes to make Matching Contributions in addition to ACP Test Safe Harbor Matching Contributions, Section Three, Part B, must be completed. Such contributions will be subject to ACP testing.*

5. Safe Harbor Contribution Computation Period

For purposes of applying the ADP Test Safe Harbor Contribution or the ACP Test Safe Harbor Matching Contribution. Compensation will be based on the period selected below *(select one)*

Option 1: ☑ Payroll period

Option 2: ☐ Plan Year

Option 3: ☐ Calendar Month

Option 4: ☐ Plan Year Quarter

Option 5: ☐ Semi-annual

NOTE: *The calculation of a Safe Harbor Contribution based on the computation period selected shall not require the Employer to remit the Safe Harbor Contribution to the Trust earlier than the time required by Plan Section 3.04(D).*

Part D. Employer Profit Sharing Contributions

1. Authorization of Employer Profit Sharing Contributions

Will the Employer make Employer Profit Sharing Contributions to the Plan on behalf of Qualifying Participants *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply. Complete the remainder of Part D only if Option 1 is selected.*

2. Contribution Formula *(select one)*

Option 1: ☑ Discretionary Formula. For each Plan Year the Employer may contribute an amount to be determined from year to year.

Option 2: ☐ Fixed Formula. percent of the Compensation of all Qualifying Participants under the Plan for the Plan Year.

Option 3: ☐ Fixed Percent of Profits Formula. percent of the Employer's profits that are in excess of $.

Option 4: ☐ Government Contract Formula. For each Hour of Service of covered employment under a government contract, the Employer shall contribute an amount as described in Plan Section 3.04(B)(3).

Option 5: ☐ Discretionary Formula By Location or Business Classification. For each Plan Year the Employer may contribute an amount to be determined from year to year and that amount may vary for each location or business classification on a separate and individual basis.

NOTE: *If no option is selected. Option 1 will apply. If Option 4 is selected, the government contract allocation formula must be selected in item 3 below.*

3. Allocation Formula

Employer Profit Sharing Contributions will be allocated to the Individual Accounts of Qualifying Participants as follows *(select one)*:

Option 1: ☑ Pro Rata Formula. In the ratio that each Qualifying Participant's Compensation for the Plan Year bears to the total Compensation of all Qualifying Participants for the Plan Year.

Option 2: ☐ Flat Dollar Formula. In the same dollar amount for each Qualifying Participant.

Option 3: ☐ Integrated Formula. Pursuant to the following integrated allocation formula described in Plan Section 3.04 (B)(2)*(select one)*:

Suboption (a): ☐ Excess Integrated Formula.

Suboption (b): ☑ Base Integrated Formula.

NOTE: *If no suboption is selected. Suboption (a) will apply.*

The integration level will be *(select one)*:

Suboption (a): ☐ The Taxable Wage Base.

Suboption (b): ☐ $ *(a dollar amount less than the Taxable Wage Base).*

Suboption (c): ☐ percent *(not more than 100%)* of the Taxable Wage Base.

NOTE: *If no suboption is selected, Suboption (a) will apply*

Option 4: ☐ Government Contract Formula. Pursuant to the government contract contribution formula selected in Part D, item 2, Option 4. above.

Option 5: ☐ Age Weighted Formula. Employer Profit Sharing Contributions shall be allocated to the Individual Accounts of Qualifying Participants in the manner described below:

Step 1: Determine each Qualifying Participant's number of points based upon the following formula:

Points = .01 x Compensation x Allocation Factor derived from the allocation factor tables set forth in Plan Section 10.

The pre-retirement and post-retirement interest rate used to calculate the annual Employer Profit Sharing Contribution shall be *(select one)*:

Suboption a: ☐ 7.5%

Suboption b: ☐ 8.0%

Suboption c: ☑ 8.5%

NOTE: *If no option is selected, Suboption 3 will apply.*

Step 2: Determine each Qualifying Participant's allocation through calculation of the following formula:

$$\text{Allocation} = \frac{\text{Points of Qualifying Participant}}{\text{Total Points of all Qualifying Participants}} \times \text{Employer Profit Sharing Contribution}$$

Step 3: Make any reallocations as necessary to satisfy either the safe harbor formula for plans with a uniform points allocation or the general test described in Code Section 401(a)(4) and the corresponding Treasury Regulations concerning nondiscrimination in the amount of Employer Profit Sharing Contributions. Identify whether the safe harbor or general test will be satisfied for the selected formula *(select one)*:

Suboption a: ☑ Safe harbor reallocations may be made as necessary as described in Plan Section 3.04(B)(8)(a).

Suboption b: ☐ General test reallocations may be made as necessary as described in Plan Section 3.04(B)(8)(b).

NOTE: *If no Option is elected. Option (A) shall be deemed to be selected.*

Option 6: ☐ New Comparability Formula. *(select one)*:

Suboption (a): ☐ Individual Allocation Groups. Each Qualifying Participant shall constitute a separate allocation group.

NOTE: *The Employer must provide the Plan Administrator or Trustee, if applicable, written instructions describing the allocation of the Employer Profit Sharing Contribution The instructions must be provided no later than the Employer's tax return due date, including extensions, of the year for which the allocation is made.*

Suboption (b): ☑ Pre-Determined Allocation Groups. Qualifying Participants will be divided into the following groups (one or more) with the same allocation ratio. *(Specify the groups by category of Qualifying Participant, including both Highly Compensated Employees and non-Highly Compensated Employees. Groups of Qualifying Participants who are non-Highly Compensated Employees may not be defined by limiting the group to non-Highly Compensated Employees with the lowest amount of Compensation and/or the shortest periods of service and who may represent the minimum number of such Qualifying Participants necessary to satisfy the requirements of Code Section 410(b)):*

Allocation Group 1:

Allocation Group 2:

Allocation Group 3:

Allocation Group 4:

Allocation Group 5:

Allocation Group 6:_____

NOTE: *If more than six allocation groups are needed, complete Attachment D, New Comparability Allocation Group(s). The Employer must notify the Trustee or Custodian and the Plan Administrator either in writing (or in any other form permitted by rules promulgated by the IRS or DOL) of the amount of the contribution for each group.*

☐ Flat Dollar (i.e., the same dollar amount for each Qualifying Participant in the applicable allocation group).

☑ Pro-rata (i.e., in the ratio that the Compensation of each Qualifying Participant in the applicable allocation group for the Plan Year bears to the total Compensation of all Qualifying Participants in such allocation group for the Plan Year) to the Individual Accounts of all Qualifying Participants in such allocation group. The amounts so allocated shall satisfy the cross-testing gateway requirements set forth in the Plan and shall not exceed the limits imposed by Section 415 of the Internal Revenue Code. (If elected, complete the Interest Rate and Mortality Assumptions and Cross-Testing Gateway sections below)

Suboption (c): ☐ Employer Contributions shall be allocated based upon the following age and/or service weighted formula *(select one)*:

Option 1: ☐ Contributions will be allocated based on the following Years of Vesting Service:

Years of Vesting Service (Identify categories)	Allocation Rate
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Option 2: ☐ Contributions will be based on the following age of the Participant:

Age (Identify categories)	Allocation Rate
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Option 3: ☐ Contributions will be based on the following sum of the age of the Participant and Years of Vesting Service:

Sum of Age and Years of Vesting Service (Identify categories)	Allocation Rate
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Interest Rate Assumption and Mortality Table:

For purposes of demonstrating that the Employer Contribution amounts allocated to the Individual Accounts of Participants are nondiscriminatory as required by Section 401(a)(4) of the Code and the regulations thereunder, the following shall apply:

1. Interest Rate. The pre-retirement and post-retirement interest rate assumption shall be *(select one)*

Option 1: ☐ 7.5%

Option 2: ☐ 8.0%

Option 3: ☑ 8.5%

NOTE: *If no option is selected, Option 3 will be deemed to be selected.*

2. Mortality Table. The mortality table shall be *(select one)*

Option 1: ☑ UP-1984 Mortality Table

Option 2: ☐1983 Group Annuity Mortality Table (1983 GAM)

Option 3: ☐1983 Individual Annuity Mortality Table (1983 1AM)

Option 4: ☐ 1971 Group Annuity Mortality Table (1971 GAM)

Option 5: ☐1971 Individual Annuity Mortality Table (1971 IAM)

NOTE: *If no option is selected, Option 1 will be deemed to be selected.*

New Comparability Gateway

For purpose of satisfying the new comparability gateway the Plan shall use the following method *(select one):*

Option 1: ☐ The Plan will provide benefits that satisfy the broadly available basis requirements described in Plan Section 3.04(B)(9)(a).

Option 2: ☐ **Not Applicable**. Suboption C of this Option 4 has been selected and the formula provides age/service based allocation rates as described in Section 3.04(B)(9)(b) of the Plan.

Option 3: ☑ The Plan will satisfy the minimum allocation method identified below (select one):

Suboption A: ☐ Provide each non-Highly Compensated Employee with a minimum allocation of at least 5% of the non-Highly Compensated Employee's Compensation (if the definition of Compensation is not within the meaning of Code Section 415(c)(3), a definition which satisfies Code Section 415(c)(3) will apply).

Suboption B: ☐ Provide each non-Highly Compensated Employee with a minimum allocation so that each non-Highly Compensated Employee has an allocation rate of at least one-third of the allocation rate of the Highly Compensated Employee with the highest allocation rate.

Suboption C: ☐ Provide each non-Highly Compensated Employee with a minimum allocation equal to the lesser of the amount described in Suboption A or Suboption B above.

Suboption D: ☐ Reallocate contributions allocated to Highly Compensated Employees to non-Highly Compensated Employees so that the allocation to each non-Highly Compensated Employee equals at least one-third of the allocation rate of the Highest Compensated Employee with the highest allocation rate in the manner as described in Plan Section 3.04(B)(10).

Suboption E: ☐ Reallocate contributions allocated to Highly Compensated Employees to non-Highly Compensated Employees so that the allocation to each non-Highly Compensated Employee equals at least 5% of the non-Highly Compensated Employee's Compensation (if the definition of Compensation is not within the meaning of Code Section 415(c)(3), a definition which satisfies Code Section 415(c)(3) will apply) in the manner as described in Plan Section 3.04(B)(11).

Suboption F: ☑ Reallocate preliminary contributions or hypothetical contributions paid to Highly Compensated Employees to non-Highly Compensated Employees so that the allocation to each non-Highly Compensated Employee equals the lesser of the amount described in Suboption D or Suboption E above.

NOTE: *If Option 3 is selected and no suboption is selected, Suboption F will apply, if necessary.*

NOTE: *If no option is selected, Option 1 will apply unless the government contract contribution formula is selected in item 2 above, in which case Option 4 will apply. Option 4 cannot be selected unless the government contract contribution formula in item 2 above applies. In the case of Self-Employed Individuals, the requirements of Treasury Regulation Section 1.401(k)-1(A)(6) continue to apply, and a new comparability or age-weighted allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of the allocation method.*

4. Employer Profit Sharing Contribution Computation Period

For purposes of applying the Employer Profit Sharing contribution, Compensation will be based on the period selected below *(select one)*:

Option 1: ☐ Payroll period

Option 2: ☑ Plan Year

Option 3: ☐ Calendar Month

Option 4: ☐ Plan Year Quarter

Option 5: ☐ Semi-annual

NOTE: *The calculation of a Employer Profit Sharing Contribution based on the computation period selected shall not*

require the Employer to remit the Employer Profit Sharing Contribution to the Trust earlier than the time required by Plan Section 3.04(D). However, if the Integrated or Cross-Tested Formula is selected, then Option 2. Plan Year must be selected.

5. Qualifying Participants

A Participant will be a Qualifying Participant, and thus entitled to share in the Employer Profit Sharing Contribution for any Plan Year, only if the Participant has satisfied all of the eligibility requirements described in Section Two of this Adoption Agreement on at least one day of such Plan Year and satisfies the following additional condition(s) *(select one)*:

Option 1: ☐ Hours of Service Requirement. The Participant completes at least **500** *(not more than 1,000)* Hours of Service during the Plan Year. However, this condition will be waived for the following reason(s)*(select all that apply)*:

☐ The Participant's Death

☐ The Participant's Termination of Employment after having incurred a Disability.

☐ The Participant's Termination of Employment after having reached Normal Retirement Age.

☐ The Participant's Termination of Employment after having reached Early Retirement Age.

☑ The Participant is employed on the last day of the Plan Year.

☑ Last Day Requirement. The Participant is an Employee of the Employer on the last day of the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply)*:

☐ The Participant's Death.

☐ The Participant's Termination of Employment after having incurred a Disability.

☐ The Participant's Termination of Employment after having reached Normal Retirement Age.

☐ The Participant's Termination of Employment after having reached Early Retirement Age.

☐ The Participant's Termination of Employment after having completed at least Hours of Service during the Plan Year.

Option 2: ☐ No additional conditions apply.

NOTE: *If no option is selected, Option 2 will apply.*

6. Contributions To Non-Highly Compensated Disabled Participants

Will a non-Highly Compensated Employee Participant who has incurred a Disability be entitled to an Employer Profit Sharing Contribution pursuant to Plan Section 3.04(B)(1) *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply.*

7. One-Time Irrevocable Participation Elections

May an Employee make a one-time irrevocable election, as described in Plan Section 3.05. upon first becoming eligible to participate in the Plan, to have the Employer make annual contributions equal to a specified amount or percentage of their Compensation (including an election to contribute no amount or percentage of Compensation) contributed to the Plan *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply. Contributions made pursuant to Plan Section 3.05 will be considered Employer Profit Sharing Contributions for purposes of nondiscrimination testing.*

Part E. Qualified Nonelective Contributions

1. Qualified Nonelective Contribution Formula

For each Plan Year, the Employer may contribute an amount to be determined from year to year.

2. Allocation of Qualified Nonelective Contributions

Allocation of Qualified Nonelective Contributions to Participants entitled thereto shall be made *(select one):*

Option 1: ☐ Targeted QNEC. In an amount, determined pursuant to Plan Section 3.06, required to satisfy either the Actual Deferral Percentage test described in Plan Section 3.14, the Actual Contribution Percentage test described in Plan Section 3.15, or both.

Option 2: ☑ Pro Rata Non-Highly Compensated Employee Participants. In the ratio that each non-Highly Compensated Employee Participant's Compensation for the applicable Plan Year bears to the total Compensation of all non-Highly Compensated Employee Participants for such Plan Year.

Option 3: ☐ Pro Rata All Participants. In the ratio that each Participant's Compensation for the applicable Plan Year bears to the total Compensation of all Participants for such Plan Year.

Option 4: ☐ Limited Pro Rata Non-Highly Compensated Employee Participants. In the ratio that each non-Highly Compensated Employee Participant's Compensation not in excess of $ for the applicable Plan Year bears to the total Compensation of all non-Highly Compensated Employee Participants entitled to an allocation not in excess of $ for such Plan Year.

Option 5: ☐ Government Contract Formula. In an amount based on each Hour of Service of covered employment under a government contract, as described in Plan Section 3.06(B).

NOTE: *If no option is selected. Option 1 will apply.*

3. Additional Conditions for Receiving Qualified Nonelective Contributions

A Participant will be a Qualifying Participant, and thus entitled to share in Qualified Nonelective Contribution for any Plan Year, only if the Participant has satisfied all of the eligibility requirements of Section Two of this Adoption Agreement on at least one day of such Plan Year and satisfies the following additional condition(s) *(select one):*

Option 1: ☐ Hours of Service Requirement. The Participant completes more than (not more than 1000) Hours of Service during the Plan Year. However, this condition will be waived for the following reason(s)

(select all that apply):

☐ The Participant's Death.

☐ The Participant's Termination of Employment after having incurred a Disability.

☐ The Participant's Termination of Employment after having reached Normal Retirement Age.

☐ The Participant's Termination of Employment after having reached Early Retirement Age.

☐ The Participant is employed on the last day of the Plan Year.

☐ Last Day Requirement. The Participant is an Employee of the Employer on the last day of the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply)*:

☐ The Participant's Death.

☐ The Participant's Termination of Employment after having incurred a Disability.

☐ The Participant's Termination of Employment after having reached Normal Retirement Age.

☐ The Participant's Termination of Employment after having reached Early Retirement Age.

☐ The Contributing Participant's Termination of Employment after having completed at least Hours of Service during the Plan Year.

Option 2: ☑ No additional conditions apply.

NOTE: *If no option is selected, Option 2 will apply.*

Part F. Qualified Matching Contributions

1. Qualified Matching Contribution Formula

a. Qualified Matching Contributions

Qualified Matching Contributions, if made to the Plan, will be made on behalf of *(select all that apply)*:

☑ Elective Deferrals.

☐ Nondeductible Employee Contributions.

Note: *If no option is selected, Qualified Matching Contributions will be made with respect to Elective Deferrals.*

b. Qualified Matching Contribution Formula

If the Employer will make Qualified Matching Contributions, then the amount of such Qualified Matching Contributions made on behalf of a Qualifying Contributing Participant each Plan Year shall be equal to *(select one)*:

Option 1: ☐ Percentage of Contribution Match.

That percentage of each Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the Contributing Participant's rate of Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) as specified in the matching schedule below.

Elective Deferral Percentage	Matching Percentage
Less than or equal to %	%

Notwithstanding the Qualified Matching Contribution formula specified above, no Qualified Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s), if any)*

Option 2: ☐ Two-Tiered Percentage of Contribution Match.

That percentage of each Contributing Participant's Elective Deferral (and/or Nondeductible Employee Contribution, if applicable) determined by the Contributing Participant's rate of Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) as specified in the matching schedule below.

	Elective Deferral Percentage	Matching Percentage
Base Rate	Less than or equal to %	%
Tier 2	Greater than , but less than or equal to %	%

Notwithstanding the Qualified Matching Contribution formula specified above, no Qualified Matching Contributions in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year. *(Complete the applicable blank(s), if any)*

Option 3: ☑ Such amount, if any, as determined by the Employer in its sole discretion, equal to that percentage of the Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) of each Contributing Participant entitled thereto that would be sufficient to cause the Plan to satisfy either the Actual Deferral Percentage test (described in Plan Section 3.14) or the Actual Contribution Percentage test (described in Plan Section 3.15) for the Plan Year, or both.

Notwithstanding the Qualified Matching Contribution formula specified above, no Qualified Matching Contribution in excess of $ or percent of a Contributing Participant's Compensation will be made with respect to any Contributing Participant for any Plan Year (Complete the applicable blank(s), if any).

Option 4: ☐ Other formula *(Specify an amount equal to a percentage of the Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) of each Contributing Participant entitled thereto.*

NOTE: *If no option is selected, Option 3 will apply. Matching Contributions in excess of 100 percent of a Contributing Participant's Elective Deferrals (and/or Nondeductible Employee Contribution, if applicable) will be subject to the additional ACP testing limits under Plan Section 3.07 and Treasury Regulation Section 1.401(m)-2(a)(5).*

2. Participants Entitled to Qualified Matching Contributions

a. Contributing Participants Eligible for Qualified Matching Contributions

Qualified Matching Contributions, if made to the Plan, will be made on behalf of *(select one)*:

Option 1: ☐ Each Contributing Participant who makes Elective Deferrals (and Nondeductible Employee Contributions, if applicable) and who is a non-Highly Compensated Employee.

Option 2: ☑ All Contributing Participants who make Elective Deferrals (and Nondeductible Employee Contributions, if applicable).

NOTE: *If no option is selected, Option 1 will apply.*

b. Additional Conditions for Receiving Qualified Matching Contributions

A Contributing Participant will be a Qualifying Contributing Participant for purposes of Qualified Matching Contributions, and thus entitled to share in Qualified Matching Contributions for any Plan Year, only if the Participant has satisfied all of the requirements of Section Two on at least one day of such Plan Year and satisfies the following additional condition(s) *(select one)*:

Option 1: ☐ Hours of Service Requirement. The Participant completes at least *(not more than 1,000)* Hours of Service during the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply):*

- ☐ The Participant's Death.
- ☐ The Participant's Termination of Employment after having incurred a Disability.
- ☐ The Participant's Termination of Employment after having reached Normal Retirement Age.
- ☐ The Participant's Termination of Employment after having reached Early Retirement Age.
- ☐ The Participant is employed on the last day of the Plan Year.

☐ Last Day Requirement. The Participant is an Employee of the Employer on the last day of the Plan Year. However, this condition will be waived for the following reason(s) *(select all that apply):*

- ☐ The Participant's Death.
- ☐ The Participant's Termination of Employment after having incurred a Disability.
- ☐ The Participant's Termination of Employment after having reached Normal Retirement Age.
- ☐ The Participant's Termination of Employment after having reached Early Retirement Age.
- ☐ The Participant's Termination of Employment after having completed at least Hours of Service during the Plan Year.

Option 2: ☑ No additional conditions.

NOTE: *If no option is selected, Option 2 will apply.*

Part G. Other Contributions

1. Rollover Contributions

May an Employee make rollover contributions to the Plan pursuant to Plan Section 3.07 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ Yes, unless such Employee is part of any excluded class of Employees.

Option 3: ☐ Yes, but only after becoming a Participant.

Option 4: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

a. Direct Rollovers

i. Sources of Eligible Rollover Distributions

The Plan will accept Direct Rollovers of Eligible Rollover Distributions from *(select "Yes" or "No" to each of the following items by selecting the appropriate box):*

1. A qualified plan described in Code Section 401(a) or 403(a). ☑ Yes ☐ No

2. An annuity contract described in Code Section 403(b). ☑ Yes ☐ No

3. An eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. ☑ Yes ☐ No

NOTE: *If a box is not selected for an item, "Yes" will apply for such item.*

ii. Rollover Exclusions

Will the Plan accept the following as Direct Rollovers *(select "Yes" or "No" to each of the following items by selecting the appropriate box)*?

1. Nondeductible Employee Contributions. ☐ Yes ☑ No

2. Roth Elective Deferrals. ☑ Yes ☐ No

NOTE: *Item 2 may be selected only if the Plan permits Roth Elective Deferrals under Part A of this Section. If a box is not selected for an item, "No" will apply for such item.*

b. Indirect Rollovers

i. Sources of Eligible Rollover Distributions

The Plan will accept Indirect Rollovers of Eligible Rollover Distributions from *(select "Yes" or "No" to each of the following items by selecting the appropriate box):*

1. A qualified plan described in Code Section 401(a) or 403(a). ☑ Yes ☐ No

2. An annuity contract described in Code Section 403(b). ☑ Yes ☐ No

3. An eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. ☑ Yes ☐ No

NOTE: *If a box is not selected for an item, "Yes" will apply for such item.*

ii. Rollover Exclusions

Will the Plan accept Indirect Rollover contributions of Roth Elective Deferrals *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *Indirect Rollover contributions may only consist of earnings attributable to Roth Elective Deferrals. If no option is selected, Option 2 will apply.*

c. Rollover Contributions from IRAs

Will the Plan accept rollover contributions of the portion of a distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

2. Transfer Contributions

May an Employee make transfer contributions to the Plan pursuant to Plan Section 3.09 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ Yes, unless such Employee is part of any excluded class of Employees.

Option 3: ☐ Yes, but only after becoming a Participant.

Option 4: ☐ Yes, but only if the assets are exempt from the Qualified Joint and Survivor Annuity rules as described in Plan Section 5.10 (without regard to Plan Section 5.10(E) thereof).

Option 5: ☐ No.

NOTE: *If no option is selected, Option 2 will apply.*

3. Nondeductible Employee Contributions

May a Participant make Nondeductible Employee Contributions pursuant to Plan Section 3.11 *(select one)*?

Option 1: ☐ Yes. If "Yes," check here if such contributions will be mandatory. ☑

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply.*

Nondeductible Employee Contributions may commence on (must be on or after the Effective Date).

4. Top-Heavy Contributions

a. Minimum Allocation or Benefit

For any Plan Year with respect to which this Plan is a Top-Heavy Plan, any minimum allocation required pursuant to Plan Section 3.04(E) shall be made *(select one)*:

Option 1: ☑ To this Plan. (If the allocation formula selected in Part D above does not satisfy the top-heavy minimum allocation by design, select either Suboption 1 or Suboption 2 below.)

Suboption 1: ☑ **Step 1:** The annual Employer Profit Sharing Contribution shall be initially allocated to the accounts of all Employees based upon the formula set forth in Part D above. If any non-Key Employee does not receive a top-heavy minimum allocation under the formula, the Employer Profit Sharing Contribution shall instead be allocated first to the non-Key Employees having less than the minimum top-heavy allocation in an amount equal to the initial allocation plus any additional amount necessary to provide the top-heavy minimum allocation.

Step 2: The remaining Employer Profit Sharing Contributions shall then be allocated based upon the formula set forth in Part D, provided, however, those non-Key Employees receiving a top-heavy minimum allocation under Step 1 of this suboption (a) shall not be entitled to receive any additional allocation. Should any remaining non-Key Employee fail to receive a top-heavy minimum allocation under this Step 2, the calculation set forth in Step 1 shall be repeated until all non-Key Employees have received a top-heavy minimum allocation and the remaining Employer Profit Sharing Contribution has been allocated.

In the event the annual Employer Profit Sharing Contribution does not equal or exceed three percent (3%) of the total Compensation of all eligible non-Key Employees, eligible Key Employees shall not share in the allocation and such three percent (3%) allocation on behalf of non-Key Employees shall be reduced pro rata based upon the ratio each eligible non-Key Employee's Compensation bears to the total of all such non-Key Employee's Compensation.

Suboption 2: ☐ An allocation of three percent (3%) of Compensation will first be made to all Employees eligible to participate in the Plan; thereafter the remaining Employer Profit Sharing Contribution will be allocated to the accounts of all Employees as set forth in Part D above. In the event the annual Employer Profit Sharing Contribution does not equal or exceed three percent (3%) of the total Compensation of all eligible non-Key Employees, such three percent (3%) allocation shall be reduced pro rata based upon the ratio each eligible non-Key Employee's Compensation bears to the total of all such non-Key Employees' Compensation,

NOTE: *If no option is selected, Option 1 will apply.*

b. Participants Entitled To Receive Minimum Allocation

If a minimum allocation required pursuant to Plan Section 3.04(E) is not satisfied with either Employer Profit Sharing Contributions or Matching Contributions, the remaining minimum allocation required pursuant to Plan Section 3.04(E) shall be allocated to the Individual Accounts of *(select one)*:

Option 1: ☑ Participants who are not Key Employees.

Option 2: ☐ All Participants.

NOTE: *If no option is selected, Option 1 will apply.*

c. Top-Heavy Ratio

For purposes of computing the top-heavy ratio as described in Plan Section 7.19(B), the Present Value of benefits under a defined benefit plan will be discounted only for mortality and interest based on the following *(select one)*:

Option 1: ☑ Not applicable because the Employer has not maintained a defined benefit plan.

Option 2: ☐ The interest rate and mortality table specified for this purpose in the defined benefit plan.

Option 3: ☐ Interest rate of percent and the following mortality table *(specify)*.

Part H. ADP Testing Method

The testing method used for purposes of the ADP test under this Plan shall be *(select one)*:

Option 1: ☐ Prior Year Testing Method.

Initial Plan Year ADP

If this is not a successor Plan, then for the first Plan Year that this Plan permits any Participant to make Elective Deferrals, the ADP for Participants who are non-Highly Compensated Employees shall be *(select one)*:

Suboption (a): ☐ 3%.

Suboption (b): ☐ Such first Plan Year's ADP.

NOTE: *If no suboption is selected, Suboption (a) will apply.*

Option 2: ☑ Current Year Testing Method.

NOTE: *If no option is selected, Option 1 will apply unless the Adopting Employer elects to apply the Safe Harbor CODA provisions of Section Three, Part C above, in which case Option 2 will apply. If the Adopting Employer elects to apply the Safe Harbor CODA provisions of Section Three, Part C above, Option 2 must be selected. If Option 2 is selected, the current year testing method must continue to be used unless 1) the Plan has been using the current year testing method for the preceding five Plan Years, or, if fewer, the number of Plan Years the Plan has been in existence, or 2) the Plan otherwise meets one of the conditions specified in the Treasury Regulations (or additional guidance issued by the Internal Revenue Service (IRS)) for changing from the current year testing method. The current year testing method may be elected for the ADP test even if prior year testing is elected for the ACP test. However, if different testing methods for the ADP and ACP tests are selected, the Plan cannot use*

recharacterization to correct Excess Contributions, take Elective Deferrals into consideration to satisfy the ACP test, or use Qualified Matching Contributions to satisfy the ADP test.

Part I. ACP Testing Method

The testing method used for purposes of the ACP test under this Plan shall be *(select one)*:

Option 1: ☐ Prior Year Testing Method.

Initial Plan Year ACP

If this is not a successor Plan, then for the first Plan Year that this Plan permits any Participant to make Nondeductible Employee Contributions, provides for Matching Contributions or both, the ACP for Participants who are non-Highly Compensated Employees shall be *(select one)*:

Suboption (a): ☐ 3%.

Suboption (b): ☐ Such first Plan Year's ADP.

NOTE: *If no suboption is selected, Suboption (a) will apply.*

Option 2: ☑ Current Year Testing Method.

NOTE: *If no option is selected. Option 1 will apply unless the Adopting Employer elects to apply the Safe Harbor CODA provisions of Section Three, Part C above, in which case Option 2 will apply. If the Adopting Employer elects to apply the Safe Harbor CODA provisions of Section Three, Part C above. Option 2 must be selected. If Option 2 is selected, the current year testing method must continue to be used unless 1) the Plan has been using the current year testing method for the preceding five Plan Years, or, if fewer, the number of Plan Years the Plan has been in existence, or 2) the Plan otherwise meets one of the conditions specified in the Treasury Regulations (or additional guidance issued by the Internal Revenue Service (IRS)) for changing from the current year testing method. The current year testing method may be elected for the ACP test even if prior year testing is elected for the ADP test. However, if different testing methods for the ADP and ACP tests are selected, the Plan cannot use recharacterization to correct Excess Contributions, take Elective Deferrals into consideration to satisfy the ACP test, or use Qualified Matching Contributions to satisfy the ADP test.*

SECTION FOUR: VESTING AND FORFEITURES

Complete Parts A through K

Part A. Vesting Schedule For Matching Contributions

A Participant will become Vested in the portion of their Individual Account derived from Matching Contributions (including ACP Test Safe Harbor Matching Contributions), if applicable, made pursuant to Section Three of the Adoption Agreement as follows.

YEARS OF VESTING SERVICE	VESTED PERCENTAGE				
Matching	**Option 1☑**	**Option 2☐**	**Option 3☐**	**Option 4☐** *(complete if chosen)*	**Option 5☐** *(complete if chosen)*
Less than One	100%	0%	0%	%	%
1	100%	0%	0%	%	%
2	100%	0%	20%	%	%
3	100%	100%	40%	%	100%
4	100%	100%	60%	%	100%
5	100%	100%	80%	%	100%
6	100%	100%	100%	100%	100%

NOTE: *If no option is selected as of the first date on which such contributions may be made to the Plan, Option 1 will apply. A Participant with accrued benefits derived from Matching Contributions who has not completed at least one Hour of Service under the Plan in a Plan Year beginning after December 31, 2001, will be subject to the vesting schedule in effect after January 1, 2002, unless otherwise elected by the Employer in an amendment adopting provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Please list the pre-EGTRRA vesting schedules, if applicable, on the Attachment A, Protected Benefits and Prior Plan Provisions.*

Part B. Vesting Schedule For Employer Profit Sharing Contributions

A Participant will become Vested in the portion of their Individual Account derived from Employer Profit Sharing Contributions, if applicable, made pursuant to Section Three of the Adoption Agreement as follows.

YEARS OF VESTING SERVICE	VESTED PERCENTAGE				
Profit Sharing	**Option 1☐**	**Option 2☑**	**Option 3☐**	**Option 4☐** *(complete if chosen)*	**Option 5☐** *(complete if chosen)*
Less than One	100%	0%	0%	%	%
1	100%	0%	0%	%	%
2	100%	0%	20%	%	%
3	100%	100%	40%	%	100%
4	100%	100%	60%	%	100%

5	100%	100%	80%	%	100%
6	100%	100%	100%	100%	100%

NOTE: *If no option is selected as of the first date on which such contributions may be made to the Plan, Option 1 will apply.*

Part C. Measuring Period For Vesting

Years of Vesting Service shall be measured over the following 12-consecutive month period:

Option 1: ☑ The Plan Year.

Option 2: ☐ The 12-consecutive month period commencing with the Employee's Employment Commencement Date and each successive 12-month period commencing on the anniversaries of the Employee's Employment Commencement Date.

Option 3: ☐ Other *(specify)*.

NOTE: *If no option is selected, Option 1 will apply.*

Part D. Year of Vesting Service

1. 1,000 Hours of Service (no more than 1,000) shall be required to constitute a Year of Vesting Service.

2. 500 Hours of Service (no more than 500 but less than the number specified in Part D, item 1, above) must be exceeded to avoid a Break in Vesting Service.

NOTE: *If no hours are specified, 1,000 and 500 will apply for items 1 and 2, respectively.*

Part E. Exclusion of Certain Years of Vesting Service

All of an Employee's Years of Vesting Service with the Employer are counted to determine the Vested percentage in the Participant's Individual Account except *(select all that apply)*:

☐ Years of Vesting Service before the Employee reaches age 18.

☐ Years of Vesting Service before the Employer maintained this Plan or a predecessor plan.

☐ Years of Vesting Service during a period for which the Employee made no mandatory Nondeductible Employee Contributions.

Part F. Vesting Following Breaks in Service

Will the rehire hold-out rule specified in Plan Section 2.04(C) apply for purposes of determining the Vested portion of a Participant's Individual Account?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply.*

Part G. Fully Vested Under Certain Circumstances

Will an Employee be fully Vested under the following circumstances *(select "Yes" or "No" to each of the following items by selecting the appropriate box)?*

1. The Employee dies.	☑ Yes	☐ No
2. The Employee incurs a Disability.	☑ Yes	☐ No
3. The Employee satisfies the conditions for Early Retirement Age (if applicable).	☐ Yes	☑ No

NOTE: *If a box is not selected for an item, "Yes" will apply for that item.*

Part H. Timing of Forfeiture Allocations

Timing of forfeiture allocations of all Employer Contributions will be *(select one)*:

Option 1: ☑ In the same Plan Year in which the forfeitures occur:

Option 2: ☐ In the Plan Year following the Plan Year in which the forfeitures occur.

NOTE: *If no option is selected. Option 1 will apply. Pursuant to Plan Section 3.04(C) and notwithstanding the election made above, the Employer may first apply Forfeitures to the payment of the Plan's administrative expenses in accordance with Plan Section 7.04 and/or the restoration of Participant's Individual Accounts pursuant to Plan Section 4.01(C)(3).*

Part I. Allocation of Forfeitures of Matching Contributions

Forfeitures of Matching Contributions will be *(select one)*:

Option 1: ☐ Allocated to the Individual Accounts of the Participants specified below in the ratio that each Participant's

Compensation for the Plan Year bears to the total Compensation of all Participants for such Plan Year. The Participants entitled to receive allocations of such Forfeitures will be *(select one)*:

Suboption (a): ☐ Qualifying Contributing Participants.

Suboption (b): ☐ Qualifying Participants.

Suboption (c): ☐ All Participants.

NOTE: *If no suboption is selected, Suboption (a) will apply.*

Option 2: ☑ Applied to reduce Employer Contributions.

NOTE: *If no option is selected, Option 2 will apply. Pursuant to Plan Section 3.04(C) and notwithstanding the election made above, the Employer may first apply Forfeitures to the payment of the Plan's administrative expenses in accordance with Plan Section 7.04 and/or the restoration of Participant's Individual Accounts pursuant to Plan Section 4.01(C)(3).*

Part J. Allocation of Forfeitures of Excess Aggregate Contributions

Forfeitures of Excess Aggregate Contributions will be *(select one)*:

Option 1: ☐ Allocated to the Individual Accounts of each Qualifying Contributing Participant's Matching Contribution account in the ratio that each Qualifying Contributing Participant's Compensation for the Plan Year bears to the total Compensation of all Qualifying Contributing Participants who are non-Highly Compensated Employees for such Plan Year.

Option 2: ☑ Applied to reduce Employer Contributions.

NOTE: *If no option is selected, Option 2 will apply. Pursuant to Plan Section 3.04(C) and notwithstanding the election made above, the Employer may first apply Forfeitures to the payment of the Plan's administrative expenses in accordance with Plan Section 7.04 and/or the restoration of Participant's Individual Accounts pursuant to Plan Section 4.01(C)(3).*

Part K. Allocation of Forfeitures of Employer Profit Sharing Contributions

Forfeitures of Employer Profit Sharing Contributions will be *(select one)*:

Option 1: ☐ Allocated to the Individual Accounts of the Participants specified below in the manner described in Plan Section 3.04(C) (for Employer Profit Sharing Contributions).

The Participants entitled to receive allocations of such Forfeitures will be *(select one)*:

Suboption (a): ☐ Qualifying Participants.

Suboption (b): ☐ All Participants.

NOTE: *If no suboption is selected, Suboption (a) will apply.*

Option 2: ☑ Applied to reduce Employer Contributions.

NOTE: *If no option is selected, Option 2 will apply. Pursuant to Plan Section 3.04(C) and notwithstanding the election made above, the Employer may first apply Forfeitures to the payment of the Plan's administrative expenses in accordance with Plan Section 7.04 and/or the restoration of Participant's Individual Accounts pursuant to Plan Section 4.01(C)(3).*

SECTION FIVE: DISTRIBUTIONS AND LOANS

Complete Parts A through D

Part A. Eligibility for Distributions *(Answer each of the following items.)*

1. Distributions Upon Termination of Employment

a. Individual Account Balances Less Than or Equal to the Cashout Level

i. Cashout Level for Terminated Participants

For purposes of applying the cashout rules in Plan Section 4.01(C), the cashout level shall be *(select one)*:

Option 1: ☑$5,000.

Option 2: ☐$1,000.

Option 3: ☐$200.

Option 4: ☐$ *(specify an amount less than $1,000).*

Option 5: ☐Not Applicable. The cashout distribution provisions in Plan Section 4.01(C)(1) will not apply.

NOTE: *If no option is selected, Option 2 will apply. A cashout level exceeding $1,000 will subject the Plan to the automatic rollover requirements of Code Section 401(a)(31)(B) as described in Plan Section 5.01(B). If Option 5 is selected, you may skip item (ii) below because the value of the Vested portion of the Participant's Individual Account must remain in the Plan until the Participant is entitled to, and requests (if required), a distribution.*

ii. Rollovers Disregarded in Involuntary Cashouts

Will rollover contributions be included in determining the value of a Participant's Vested Individual Account for purposes of Plan Sections 5.01 and 5.04 *(select one)*?

Option 1: ☑Yes.

Option 2: ☐No.

NOTE: *If no option is selected, Option 1 will apply. If Option 2 is selected, the Plan may be subject to the automatic rollover rules pertaining to cashout amounts described in Plan Section 5.01 even if the cashout amount is $ 1,000 or less.*

b. Individual Account Balances Exceeding Cashout Level

i. Employee Has Not Reached Normal Retirement Age

May an Employee who has not reached Normal Retirement Age request a distribution from the Plan of that portion of the Participant's Individual Account attributable to Employer Contributions upon incurring a Termination of Employment *(select one)*?

Option 1: ☑Yes.

Option 2: ☐No.

NOTE: *If no option is selected, Option 1 will apply.*

ii. Severance from Employment

May a Participant request a distribution of their Elective Deferrals, Qualified Nonelective Contributions, Qualified Matching Contributions, and earnings on account of Severance from Employment pursuant to Plan Section 5.01(A)(2)?

Option 1: ☑Yes.

Option 2: ☐No.

NOTE: *If no option is selected, Option 1 will apply.*

2. Distributions During Employment

a. In-Service Withdrawals

i. In-Service Availability for Elective Deferrals

Will a Participant who has not incurred a Severance from Employment be entitled to request an in-service withdrawal from the Plan of that portion of the Participant's Individual Account attributable to Elective Deferrals. Qualified Nonelective Contributions, and Qualified Matching Contributions *(select one)*?

☑Yes, if he or she has attained age 59 ½ *(must be at least age 59 ½. If no age is specified, age 59 ½ will apply)*

☐Yes, if he or she has attained Normal Retirement Age.

NOTE: *If either box is selected above, select whether in-service distributions will be available from Pre-Tax and/or Roth Elective Deferrals.*

☑Pre-Tax Elective Deferrals.

☑Roth Elective Deferrals.

NOTE: *If a Participant is permitted to request an in-service distribution upon attainment of Normal Retirement Age, he or she must also be at least age 59 ½ to be eligible for the distribution. If in-service distributions are permitted and neither Pre-Tax nor Roth Elective Deferrals is selected, in-service distributions will be permitted from both Pre-Tax Elective Deferrals and Roth Elective Deferrals.*

ii. In-Service Availability for Employer Contributions

Will a Participant be entitled to request an in-service withdrawal from the Plan of that portion of the Participant's Individual Account attributable to Matching Contributions, and Employer Profit Sharing Contributions *(select one)*?

Option 1: ☑ Yes, with respect to the following contributions *(select all that apply and complete the table below).*

☑Matching Contributions.

☑Employer Profit Sharing Contributions.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply with respect to all Matching Contributions, and Employer Profit Sharing Contributions.*

	Matching Contributions	Employer Profit Sharing Contributions
Upon attainment of age 59 ½		
Upon attainment of Normal Retirement Age		
Upon attainment of age *(specify an age other than age 59 ½)*:		
Upon reaching a Vested percentage equal to: 100%		
The maximum Vested percent of the Individual Account that may be withdrawn is *(specify Vested percent)*:		
After contributions have been allocated to the Plan for a period of years equal to *(must be at least two)*:		
After participating in the Plan for a period of years equal to *(must be at least five unless the applicable contributions have been allocated to the Plan for at least two years as specified in the box above)*:		
The maximum number of in-service withdrawals that may be taken while a Participant is employed by the Employer is *(specify either "unlimited" or the actual number that applies (e.g., one, one per year, etc.))*: **Unlimited**		
After participating in the Plan for a period of years equal to (a) and attaining age (b).	(a) (b)	(a) (b)
After becoming 100% Vested, participating in the Plan for a period of years equal to (a) and attaining age (b).	(a) **0** (b) **59.5**	(a) **0** (b) **59.5**

NOTE: *Place an "x" or enter the specific criteria (e.g., age, vested percentage, etc.) in each box, as applicable. A*

Participant need only satisfy the criteria in one of the rows to be eligible for an in-service distribution. If Option 1 applies and no selections or entries are made in the table above. Plan Section 5.01(C)(1) will apply in determining whether a Participant is entitled to an in-service distribution and there will be no limit on the number of in-service distributions.

b. Hardship Withdrawals

i. Hardship Availability for Elective Deferrals

Will a Participant who has not incurred a Severance from Employment be entitled to request a hardship distribution from the Plan of that portion of the Individual Account attributable to Elective Deferrals *(select one)*?

Option 1: ☐ Yes, With respect to the following contributions *(select all that apply:)*

☑ Pre-tax Elective Deferrals.

☐ Roth Elective Deferrals.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 1 will apply and hardship distributions will be available from both Pre-tax and Roth Elective Deferrals. Hardship distributions of Elective Deferrals will result in a suspension of an Employee's Elective Deferrals (and Employee Nondeductible Contributions, if applicable) as described in Section 5.01(C)(2)(b) of the Plan.*

ii. Hardship Availability for Matching Contributions, and Employer Profit Sharing Contributions

Will a Participant be entitled to request a hardship distribution from the Plan *(select one)*?

Option 1: ☐ Yes, with respect to the following contributions (select all that apply).

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Option 2: ☐ Yes, with respect to the following contributions and only with respect to a Participant who is 100 percent Vested in their Individual Account attributable to such contributions.

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Option 3: ☐ Yes, with respect to the following contributions and only with respect to a Participant who has participated in the Plan for or more years and has attained age .

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Option 4: ☐ Yes, with respect to the following contributions and only with respect to a Participant who is 100 percent Vested in their Individual Account and has participated in the Plan for or more years and has attained age .

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Option 5: ☑ No.

NOTE: *If no option is selected, Option 1 will apply with respect to all Matching Contributions and Employer Profit Sharing Contributions. If Option 1, 2, 3 or 4 applies, complete the following.*

How will hardship be defined for purposes of this section?

Suboption (a): ☐ The definition of hardship described in Plan Section 5 .01(C)(2)(a) will apply with respect to the following types of contributions, therefore an Employee's Elective Deferrals (and Nondeductible Employee Contributions, if applicable) will not be suspended for six months *(select all that apply)*:

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Suboption (b): ☐ The safe harbor definition of hardship distribution described in Plan Section 5.01(C)(2)(b) will apply with respect to the following types of contributions, except that an Employee's Elective Deferrals (and Nondeductible Employee Contributions, if applicable) will not be suspended for six months (select all that apply):

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

Suboption (c): ☐ The safe harbor definition of hardship distribution described in Plan Section 5.01(C)(2)(b) will apply with respect to the following types of contributions, including the requirement that an Employee's Elective Deferrals (and Nondeductible Employee Contributions, if applicable) will be suspended for six months *(select all that apply)*:

☐ Matching Contributions.

☐ Employer Profit Sharing Contributions.

NOTE: *If no suboption is selected, Suboption (b) will apply to the option selected in item (b)(ii) above with regard to Matching Contributions and Employer Profit Sharing Contributions.*

3. Miscellaneous Distribution Issues

a. Withdrawals of Rollover Contributions

Will an Employee be entitled to request a distribution of their rollover contributions at any time *(select one)*?

Option 1: ☐Yes.

Option 2: ☑No.

NOTE: *If no option is selected, Option 1 will apply. If Option 2 applies, the Plan's provisions governing distributions will apply according to Plan Section 5.01 (A)(1).*

b. Withdrawals of Transfer Contributions

Will an Employee be entitled to request a distribution of their transfer contributions at any time subject to the restrictions of Plan Section 5.01(D) *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 1 will apply. If Option 2 applies, the Plan's provisions governing distributions will apply according to Plan Section 5.01(A)(1).*

c. Disability

Will a Participant who has incurred a Disability be entitled to request a distribution from the Plan *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

Part B. Form of Distribution *(Answer each of the following items.)*

1. Individual Account Balances of $1,000 or Less

Cashout distributions of $1,000 or less that are Eligible Rollover Distributions and are made to terminated Participants pursuant to Plan Section 5.01(B) shall be *(select one)*:

Option 1: ☑ Paid in a lump sum distribution.

Option 2: ☐ Paid in a Direct Rollover to an individual retirement account *(as defined in Sections 408(a) and 408(b) of the Code)*.

NOTE: *If no option is selected, Option 1 will apply.*

2. Individual Account Balances Exceeding $1,000

a. Lump Sum

Will a Participant be entitled to request a distribution of the Vested portion of their Individual Account in a lump sum, subject to Plan Section 5.02 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

b. Partial Payments

Will a Participant be entitled to request a partial distribution of the Vested portion of their Individual Account, subject to Plan Section 5.02 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

c. Installment Payments

Will a Participant be entitled to request a distribution of the Vested portion of their Individual Account over a period not to exceed the life expectancy of the Participant or the joint and last survivor life expectancy of the Participant and their designated Beneficiary, subject to Plan Section 5.02 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

d. Annuity Contracts

Will a Participant be entitled to apply the Vested portion of their Individual Account toward the purchase of an annuity contract, subject to Plan Section 5.02 *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *Option 1 must be selected for at least one of items (a) through (d) in Part B, item 2 above. If neither option is selected for items (a) or (b) in Part B, item 2 above, Option 1 will apply. If neither option is selected for items (c) or (d), Option 2 will apply. If this Plan is restating a Prior Plan, the forms of distribution under this Plan must generally be at least as favorable as under the Prior Plan.*

Part C. Retirement Equity Act Safe Harbor

Will the safe harbor provisions of Plan Section 5.10(E) apply *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

Survivor Annuity Percentage *(Complete only if Option 2 is selected or if certain Plan assets (e.g., transfer contributions) are subject to the Retirement Equity Act annuity requirements.)*

The survivor annuity portion of the Qualified Joint and Survivor Annuity will be a percentage equal to ___ percent *(at least 50 percent, but no more than 100 percent)* of the amount paid to the Participant before their death.

NOTE: *If no option is selected, the survivor annuity portion of the Qualified Joint and Survivor Annuity will be equal to 50 percent.*

Part D. Loans

May a Participant request a loan pursuant to Plan Section 5.16 *(select one)*?

Option 1: ☑ **Yes.**

Option 1: ☐ **No.**

NOTE: *If no option is selected. Option 2 will apply.*

NOTE: *Generally, Code Section 411(d)(6) prohibits the elimination of protected benefits. Protected benefits include the timing of payout options. If the Plan is restating a Prior Plan that permitted a distribution option described above that involves the timing of a distribution, the selections must generally be at least as favorable as under the Prior Plan. Certain forms of distributions (e.g., redundant forms of distribution) may, however, be eliminated. Refer to Code Section 411(d)(6) and the corresponding Treasury regulation for details pertaining to the elimination of otherwise protected benefits. Note that ADP Test Safe Harbor Contributions may not be distributed earlier than Severance from Employment, death, Disability, an event described in Section 401(k)(10) of the Code, or, in the case of a profit sharing plan, the attainment of age 59 ½.*

SECTION SIX: DEFINITIONS

Complete Parts A through 1

Part A. Compensation

1. Base Definition

Compensation will mean all of each Participant's *(select all that apply)*:

☑ W-2 wages *(select all that apply)*:

- ☑ Matching and Employer Profit Sharing Contributions.
- ☑ Elective Deferrals.

☐ Section 3401(a) wages *(select all that apply)*:

- ☐ Matching and Employer Profit Sharing Contributions.
- ☐ Elective Deferrals

☐ 415 safe-harbor compensation *(select all that apply)*:

- ☐ Matching and Employer Profit Sharing Contributions.
- ☐ Elective Deferrals.

NOTE: *If a definition of Compensation is not selected for one or more contribution sources, W-2 wages will apply to such source.*

2. Determination Period

Compensation shall be determined over the following applicable period *(select one)*:

Option 1: ☑ The Plan Year.

Option 2: ☐ The calendar year ending with or within the Plan Year.

Option 3: ☐ The consecutive 12-month period, beginning on *(specify month and day)* .

NOTE: *If no option is selected. Option 1 will apply.*

3. Inclusion of Elective Deferrals

Compensation shall include Employer Contributions (made pursuant to a salary reduction agreement) that are not includible in the gross income of the Employee under any of the following Code sections *(select "Yes" or "No" by selecting the appropriate box).*

Section 125 (cafeteria plans), Section 132(f)(4) (transportation fringe benefits).
Section 402(e)(3) (401(k) Plans), Section 408(k) (salary deferral SEP Plans).
Section 403(b) (tax sheltered annuity plans), Section 457 (deferred compensation plans of state and local governments and tax-exempt organizations) ☑Yes ☐No

NOTE: *If no option is selected, "Yes" will apply.*

4. Exclusions from Compensation

Compensation shall not include the following *(select any that apply)*:

☐Bonuses ☐ Commissions

☐Overtime ☐ Other *(specify)* ..

NOTE: *No exclusions from Compensation are permitted if the integrated allocation formula in Section Three, Part D, item 3 is selected. If any items are excluded, the definition of Compensation may not be a safe harbor alternative definition of compensation and may be subject to nondiscrimination testing under Code Section 414(s).*

5. Post-Severance Compensation

a. Regular Compensation

In addition to any adjustment to Compensation elected above, will regular compensation be included in Compensation *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

b. Leave Payments

In addition to any adjustment to Compensation elected above, will leave payments be excluded from Compensation *(select one)*?

Option 1: ☑ Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply.*

6. Pre-Entry Date Compensation

Unless a different definition of Compensation is required by either the Code or ERISA, for the Plan Year in which an Employee enters the Plan, the Employee's Compensation that will be taken into account for purposes of the Plan will be *(select one)*:

Option 1: ☑ Compensation from the Entry Date.

Option 2: ☐ Compensation for the full Plan Year.

NOTE: *If no option is selected, Option 1 will apply.*

Part B. Disability

For purposes of this Plan, Disability shall mean *(select one)*:

Option 1: ☑ The inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

Option 2: ☐ The inability to engage in any substantial, gainful activity in the Employee's trade or profession for which the Employee is best qualified through training or experience.

NOTE: *If no option is selected, Option 1 will apply.*

Part C. Highly Compensated Employee

1. Top Paid Group Election

For purposes of determining who is a Highly Compensated Employee under the Plan, will the top paid group election apply *(select one)*?

Option 1: ☐Yes.

Option 2: ☑No.

NOTE: *If no option is selected, Option 2 will apply.*

2. Calendar Year Data Election

If the Plan Year is a fiscal year other than a calendar year, for purposes of determining who is a Highly Compensated Employee (other than a five-percent owner) under the Plan, will the calendar year data election apply *(select one)*?

Option 1: ☐Yes.

Option 2: ☑No.

NOTE: *If no option is selected, Option 2 will apply. If the Plan Year is a calendar year, the Highly Compensated Employee determination will be based on the calendar year.*

Part D. Hour of Service - Method of Determining Service

Service will be determined on the basis of *(select one)*:

Option 1: ☐ Elapsed Time.

Option 2: ☑ Actual hours for which an Employee is paid or entitled to payment.

Option 3: ☐ Days worked. An Employee will be credited with 10 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the day.

Option 4: ☐ Weeks worked. An Employee will be credited with 45 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the week.

Option 5: ☐ Semi-Monthly payroll periods worked. An Employee will be credited with 95 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the semi-monthly payroll period.

Option 6: ☐ Months worked. An Employee will be credited with 190 Hours of Service if under the definition of Hours of Service such Employee would be credited with at least one Hour of Service during the month.

NOTE: *If no option is selected, Option 2 will apply.*

Part E. Limitation Year Means

Option 1: ☑ The Plan Year.

Option 2: ☐ The calendar year.

Option 3: ☐ Other 12-consecutive month period *(Specify a 12-consecutive month period selected in a uniform and nondiscriminatory manner.)*.

NOTE: *If no option is selected, Option 1 will apply.*

Part F. Plan Year Means

Option 1: ☐ The 12-consecutive month period which coincides with the Adopting Employer's tax year.

Option 2: ☑ The calendar year.

Option 3: ☐ The 52/53 week period ending on the *(specify day of the week)* nearest *(specify month and day)* of each year.

Option 4: ☐ Other 12-consecutive month period *(Specify a 12-consecutive month period selected in a uniform and nondiscriminatory manner.)*

NOTE: *If no option is selected, Option 1 will apply.*

If the initial Plan Year or any subsequent Plan Year is less than 12 months (a short Plan Year) specify such Plan Year's beginning and ending dates. .

Part G. Predecessor Employer Service

In addition to the Hours of Service credited when an Employer maintains the plan of a predecessor employer. Hours of Service with a predecessor employer will be credited for the following purposes where the Employer does not maintain the plan of a predecessor employer *(select all that apply)*:

☐ Eligibility.

☐ Vesting.

☐ Allocation of Contributions.

Name of Predecessor Employer(s):

If service with a predecessor is taken into account for one or more of the items listed above, specify any additional limitations on crediting service that apply (e.g., limitations by business classification, length of service, etc.):

Part H. Retirement Age

1. Early Retirement Age

The Early Retirement Age under the Plan will be *(select one)*:

Option 1: ☑ An Early Retirement Age is not applicable under the Plan.

Option 2: ☐ A Participant satisfies the Plan's Early Retirement Age conditions by attaining age and completing Years of Vesting Service.

NOTE: *If no option is selected, Option 1 will apply.*

2. Normal Retirement Age

The Normal Retirement Age under the Plan will be *(select and complete one)*:

Option 1: ☑ Age **65** *(not to exceed 65 or such later age as may be allowed under Code Section 411(a)(8)).*

Option 2: ☐ The later of age *(not to exceed 65 or such later age as may be allowed under Code Section 411(a)(8))* or the *(not to exceed fifth)* anniversary of the first day of the first Plan Year in which the Participant commenced participation in the Plan.

NOTE: *If no option is selected, Option 1 and age 59 ½ will apply.*

Part I. Valuation Date

The Plan Valuation Date will be *(select one)*:

Option 1: ☑ Daily.

Option 2: ☐ The last day of the Plan Year and each other date designated by the Plan Administrator which is selected in a uniform an nondiscriminatory manner.

Option 3: ☐ The last day of each Plan quarter.

Option 4: ☐ The last day of each month.

Option 5: ☐ Other *(Specify one or more dates that are selected in a uniform and nondiscriminatory manner, including the last day of the Plan Year.)*

NOTE: *If no option is selected, Option 2 will apply.*

SECTION SEVEN: MISCELLANEOUS

Complete Parts A and B

Part A. Life Insurance

Will life insurance investments be permitted under the Plan *(select one)*?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 2 will apply.*

Part B. Participant Direction

1. Authorization

Will a Participant be responsible for directing any or all of the investment of their Plan assets pursuant to Plan Section 7.22(B) *(select one)*?

Option 1: ☑Yes.

Option 2: ☐ No.

NOTE: *If no option is selected, Option 1 will apply. Complete the remainder of Part B only if Option 1 is selected.*

2. Investment Options

A Participant may direct the investment of their Plan assets among the following investments *(select one)*.

Option 1: ☑ Only those investment options designated by the Plan Administrator or other Fiduciary as being subject to Participant direction.

Option 2: ☐ Any investment permitted by the Plan.

NOTE: *If no option is selected, Option 1 will apply.*

3. Accounts Subject to Participant Direction

A Participant shall be responsible for directing the following portions of their Individual Account *(select one)*:

Option 1: ☑ The entire Individual Account.

Option 2: ☐ Those accounts that the Plan Administrator may designate from time to time in a uniform and nondiscriminatory manner.

Option 3: ☐ The following accounts *(select all that apply)*:

- ☐ Elective Deferral account.
- ☐ Matching Contribution account.
- ☐ Employer Profit Sharing Contribution account.
- ☐ Rollover contribution account.
- ☐ Transfer contribution account.
- ☐ Other *(Specify one or more of the accounts that may, in part, comprise a Participant's Individual Account under this Plan. Do not list any restrictions on Participant direction that would be deemed to restrict any benefits, rights or features in a discriminatory manner prohibited under Code Sec. 401(a)(4).)* .

NOTE: *If no option is selected, Option 1 will apply.*

4. Frequency of Investment Changes

A Participant may make changes to the investments within their Individual Account with the following frequency *(select one)*:

Option 1: ☑ In accordance with uniform and nondiscriminatory rules established by the Plan Administrator or other Fiduciary.

Option 2: ☐ Daily.

Option 3: ☐ Monthly.

Option 4: ☐ Quarterly.

Option 5: ☐ Other *(Specify one or more uniform and nondiscriminatory periods selected by the Plan Administrator.)*

NOTE: *If no option is selected, Option 1 will apply. The Plan's Valuation Dates must be at least as often as the frequency selected above.*

5 ERISA 404(c) Compliance

Does the Adopting Employer intend to operate this Plan in compliance with ERISA Section 404(c) as set forth in Plan Section 7.22(B)?

Option 1: ☐ Yes.

Option 2: ☑ No.

NOTE: *If no option is selected, Option 1 will apply.*

SECTION EIGHT: TRUSTEE AND CUSTODIAN

Complete Parts A and B (as applicable)

Part A. **Trustee** *(This Part A must be completed unless the Plan only covers one or more Self-Employed Individuals or satisfies another exception under ERISA. Select one.)*

1. Trustee Appointment

Option 1: ☐ Financial Organization as Trustee

Option 2: ☑ Individual Trustee(s)

The Trustee of this Plan shall be a: ☑Directed Trustee ☐Discretionary Trustee

Name of Trustee

Corrine Allen

Address

1511 3rd St.

City **Santa Fe**

Telephone
505-988-5520 State **NM** Zip **87505**

Signature

Title

Trustee

2. Trust Agreement

If a Trustee is designated in Part A, item 1 above, which trust agreement will apply to the Plan *(select one)*?

Option 1: ☑ Trust provisions contained in Plan Section Eight.

Option 2: ☐ Separate executed trust agreement attached hereto.

NOTE: *If no option is selected. Option 1 will apply. If Option 2 is selected, the attached trust agreement must be on file with the IRS for use by the Prototype Sponsor listed in Section Nine below.*

Part B. Custodian *(Both a Custodian and Trustee may be appointed for the Plan. This Part B must be completed if a Trustee is not named in Part A, above.)*

1. Custodian Appointment

Financial Organization

Address

Signature

Type Name Title

2. Custodial Agreement

If a Custodian is designated in Part B, item 1 above, which custodial agreement will apply to the Plan *(select one)*?

Option 1: ☐ Custodial provisions contained in Plan Section Eight.

Option 2: ☐ Separate executed custodial agreement attached hereto.

NOTE: *If no option is selected. Option 1 will apply. If Option 2 is selected, the attached custodial agreement must be on file with the IRS for use by the Prototype Sponsor listed in Section Nine below.*

SECTION NINE: EMPLOYER SIGNATURE

Practitioner

Name of Practitioner **Paychex, Inc.**

Address **1175 John Street, West Henrietta, NY 14586**

Telephone **1-800-472-0072**

Plan Administrator

☐ Check here and provide the applicable information below if someone other than the Adopting Employer will be the Plan Administrator.

Name of Plan Administrator _____

Address _____

City _____ State Zip

Telephone _____

Signature of Plan Administrator _____ Date Signed

Type Name _____

Check the applicable box if there is an attachment(s) that applies to this Plan other than a separate trust or custodial agreement.

☐ Attachment A, Protected Benefits and Prior Plan Provisions.

☐ Attachment B, Participating Employer Form.

☐ Attachment C, Special Effective Date(s).

☐ Attachment D, New Comparability Allocation Group(s)

Other: *(If this box is checked, please describe the attachment(s))* _____

☐

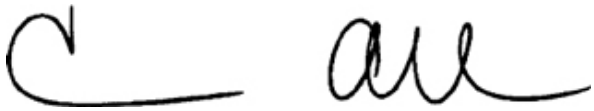
Authorized Employer Signature

I am an authorized representative of the Adopting Employer named above and I state the following:

1. **I acknowledge that I have relied upon my own advisors regarding the completion of this Adoption Agreement and the legal tax implications of adopting this Plan;**
2. **I understand that my failure to properly complete this Adoption Agreement may result in disqualification of the Plan;**
3. **I understand that the Prototype Sponsor will inform me of any amendments made to the Plan and will notify me should it discontinue or abandon the Plan; and**
4. **I have received a copy of this Adoption Agreement, the corresponding Basic Plan Document and, if applicable, any separate trust or custodial agreement used in lieu of the trust or custodial agreement contained in the Basic Plan Document.**

Signature of Adopting Employer

Date Signed
01/12/2010



Type Name

Corinne Allen

Title

CFO

NOTE: *The Adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code Section 401 of the Internal Revenue Code except to the extent provided in Revenue Procedure 2005-16. An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code Section 419A(d)(3), or an individual medical account, as defined in Code Section 415(1)(2) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code Sections 415 and 416.*

If the Employer who adopts or maintains multiple plans wishes to obtain reliance with respect to the requirements of Code Sections 415 and 416, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service. The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the Plan or in Revenue Procedure 2005-16. This Adoption Agreement may be used only in conjunction with Basic Plan Document #01.

SECTION TEN: ALLOCATION FACTOR TABLES

Employers selecting the Age-Weighted Formula in the Adoption Agreement for purposes of allocation Employer Profit Sharing Contributions shall use the following tables in determining the Allocating Factor.

Age Related Allocation Factors*

Participant's Current Age	Interest Rate 7.5%	8.0%	8.5%
1	0.991	0.714	0.515
2	1.066	0.771	0.559
3	1.146	0.833	0.606
4	1.232	0.899	0.658
5	1.324	0.971	0.714
6	1.423	1.049	0.775
7	1.530	1.133	0.840
8	1.645	1.223	0.912
9	1.768	1.321	0.989
10	1.901	1.427	1.074
11	2.043	1.541	1.165
12	2.197	1.665	1.264
13	2.361	1.798	1.371
14	2.539	1.942	1.488
15	2.729	2.097	1.614
16	2.934	2.265	1.751
17	3.154	2.446	1.900
18	3.390	2.641	2.062
19	3.644	2.853	2.237
20	3.918	3.081	2.427
21	4.212	3.327	2.634
22	4.527	3.594	2.857
23	4.867	3.881	3.100
24	5.232	4.192	3.364

25	5.624	4.527	3.650
26	6.046	4.889	3.960
27	6.500	5.280	4.297
28	6.987	5.703	4.662
29	7.511	6.159	5.058
30	8.075	6.652	5.488
31	8.680	7.184	5 954
32	9.331	7.758	6.461
33	10.031	8.379	7.010

34	10.783	9.049	7.606
35	11.592	9.773	8.252
36	12.462	10.555	8.953
37	13.396	11.400	9.714
38	14.401	12.311	10.540
39	15.481	13.296	11.436
40	16.642	14.360	12.408
41	17.890	15.509	13.463
42	19.232	16.750	14.607
43	20.674	18.090	15.849
44	22.225	19.537	17.196
45	23.892	21.100	18.658
46	25.684	22.788	20.244
47	27.610	24.611	21.964
48	29.681	26.580	23.831
49	31.907	28.706	25.857
50	34.300	31.002	28.055
51	36.872	33.483	30.439
52	39.638	36.161	33.027
53	42.611	39.054	35.834
54	45.806	42.178	38.880
55	49.242	45.553	42.185
56	52.935	49.197	45.770
57	56.905	53.133	49.661
58	61.173	57.383	53.882
59	65.761	61.974	58.462
60	70.693	66.932	63.431
61	75.995	72.286	68.823
62	81.695	78.069	74.673
63	87.822	84.315	81.020
64	94.408	91.060	87.907
65	101.489	98.345	95.379

***Based on the UP 1984 Mortality Table Testing Age 65**

ATTACHMENT A
PROTECTED BENEFITS AND PRIOR PLAN PROVISIONS

This Attachment may be used by an Adopting Employer to document protected benefits and other prior plan provisions that apply to some or all of the assets of the Adopting Employer's Plan.

ADOPTING EMPLOYER PLAN INFORMATION

Name of Adopting Employer

Plan Name

Plan Sequence Number Trust Identification Number (*if applicable*) Account Number

PROTECTED BENEFITS AND PRIOR PLAN PROVISIONS

Provision 1:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.):*

Provision 2:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.):*

Provision 3:

Source of Provision *(e.g., plan name and sequence number, good faith amendment, etc.):*

ATTACHMENT B
PARTICIPATING EMPLOYER FORM

This Attachment is used only when a restated plan document is prepared and special effective dates apply for certain plan provisions.

ADOPTING EMPLOYER PLAN INFORMATION

Name of Adopting Employer

Name of Plan

Plan Sequence Number Trust Identification Number (if applicable) Account Number

SPECIAL EFFECTIVE DATES

The following participating employer will participate in the Plan of the Adopting Employer as described in the Effective Date section.

Name of Participating Employer

Address

City State Zip

Telephone Participating Employer's Federal Tax Identification Number

Participating Employer's Tax Year End (specify month and day)

Type of Business *(select one):*

☐**Sole Proprietorship** ☐**Partnership** ☐**C Corporation** ☐**S Corporation** ☐**LLC**

☐**Other** (specify a legal entity recognized under federal or exempt from federal income tax laws)

The participating Employer ☑ is ☐ is not a member of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), a commonly controlled trade or business (as defined in Code Section 414(c) as modified by Code Section 415(h)) or an affiliated service group (as defined in Code Section 414(m)).

EFFECTIVE DATES

☐ **New Plan** – This is the initial adoption of a plan by the participating employer. The effective date of the Plan is . The Effective Date is usually the first day of the Plan Year in which this Attachment. Participating Employer Form is signed and may not be earlier than such date. Elective Deferrals, however, cannot be made available before the later of the date this Attachment, Participating Employer Form is signed or the Effective Date for Elective Deferrals specified in the Adoption Agreement.

☐ **Existing Plan Restatement** – This is a restatement of an existing qualified plan of the participating employer. The effective date of this restatement is . The EGTRRA restatement Effective Date generally is the first day of the Plan Year in which this Attachment B, Participating Employer Form is signed. An amendment or restatement Effective Date after the first day of the Plan Year in which this Adoption Agreement is signed may result in a reduction or elimination of accrued benefits, violating Code Section 411 (d)(6). If Elective Deferrals are being made available for the first time as a result of an amendment or restatement. Elective Deferrals cannot be made available before the later of the date this Attachment, Participating Employer Form is signed or the Effective Date for Elective Deferrals specified in the Adoption Agreement.

☐ **Cessation** – This is the cessation of participation in the Plan by the participating employer. The effective date of the cessation is .

SIGNATURES

Adopting Employer

I am an authorized representative of the Adopting Employer named above and I acknowledge that the related employer listed on this Participating Employer Form will participate in the Plan as described above. I agree to provide the participating employer identified above with any amendments that have been made to the Plan and, if applicable, I agree to notify the participating employer of a decision to discontinue or abandon the Plan. I acknowledge that I have relied upon my own advisors regarding such employer participating or ceasing to participate in the Plan.

Signature of Adopting Employer Date Signed

Type Name Title

Participating Employer

I am an authorized representative of the related employer name above. I acknowledge that I have received a copy of the Basic Plan Document, the Adoption Agreement, IRS opinion letter and, if applicable, any separate trust agreement used in lieu of the trust agreement contained in the Basic Plan Document. In addition, I authorize the Adopting Employer to make amendments to the Plan on my behalf. I understand that the Adopting Employer, not the Prototype Sponsor, will provide me with any amendments made to the Plan, including a notification if the Adopting Employer has discontinued or abandoned the Plan. I acknowledge that I have relied upon my own advisors regarding the legal and tax implications of participating or ceasing to participate in the Plan.

Signature of Adopting Employer Date Signed

Type Name Title

Trustee *(The Trustee, if any, named on the Adoption Agreement, must sign below)*

Signature of Trustee | Date Signed

Type Name | Title

Signature of Trustee | Date Signed

Type Name | Title

Signature of Trustee | Date Signed

Type Name | Title

ATTACHMENT C
SPECIAL EFFECTIVE DATE(S)

This Attachment is used only when a restated plan document is prepared and special effective dates apply for certain plan provisions.

EMPLOYER INFORMATION

Name of Adopting Employer

Name of Plan

Plan Sequence Number Trust Identification Number (if applicable) Account Number

SPECIAL EFFECTIVE DATES

The following special effective dates shall apply to the plan: *(Select one or more as applicable)* **Note**: *All parameters or limitations stated in the Adoption Agreement apply.*

A. SECTION TWO: ELIGIBILITY

☐ Part A Age and Years of Eligibility Service. _____

_____

_____

_____ Effective Date: _____

☐ Part B Exclusion of Certain Classes of Employees. _____

_____

_____

_____

_____ Effective Date: _____

☐ Part C Entry Dates. _____

_____

_____ Effective Date: _____

_____

☐ Part D Hours Required for Eligibility Purposes. _____

_____

_____

_____

_____ Effective Date: _____

B. SECTION THREE: CONTRIBUTIONS

☐ Part A Elective Deferrals - Automatic Enrollment for Elective Deferrals _____ Effective Date: _____

Elective Deferrals - Automatic Increases for Elective Deferrals _____ Effective Date: _____

Elective Deferrals -Frequency or Limits _____

_____

_____

_____

_____ Effective Date: _____

☐ Part B Matching Contributions _____

_____

_____

_____ Effective Date: _____

☐ Part C Safe Harbor CODA Contributions _____

_____

_____

_____ Effective Date: _____

☐ Part D Employer Profit Sharing Contributions _____

_____

Effective Date: _____

☐ Part G ADP Testing Method _____

_____

_____

_____ Effective Date: _____

☐ Part H ACP Testing Method _____

_____

_____

_____ Effective Date: _____

C. SECTION FOUR: VESTING AND ALLOCATION OF FORFEITURES

☐ Part A Vesting Schedule for Matching Contributions _____

_____

_____

_____ Effective Date: _____

☐ Part B Vesting Schedule for Employer Profit Sharing Contributions _____

_____

_____

_____ Effective Date: _____

D. SECTION FIVE: DISTRIBUTIONS AND LOANS

☐ Part A Eligibility for Distributions (e.g., hardship, in-service) _____

_____

_____

_____ Effective Date: _____

Part B Form of Distribution (e.g., lump sum, installment, annuity) _____

_____

_____

_____ Effective Date: _____

☐ Part D Loans _____

_____

_____

_____

Effective Date:

E. SECTION SIX: DEFINITIONS

☐ Part A Compensation _____

_____

_____

_____

_____ Effective Date: _____

☐ Part C Highly Compensated Employee (e.g., top-paid group, calendar year election) _____

_____

_____

_____ Effective Date: _____

F. OTHER (Specify) _____

_____

_____

_____

_____

_____

_____ Effective Date: _____

ATTACHMENT D
NEW COMPARABILITY ALLOCATION GROUP(S)

This attachment is used only when the Adopting Employer selects a new comparability allocation formula to allocate Employer Profit Sharing Contributions, chooses to identify the allocation groups in the Adoption Agreement and uses more than six allocation groups.

EMPLOYER INFORMATION

Name of Adopting Employer

CytoDyn Inc.

Name of Plan

CytoDyn Inc. 401(k) Profit Sharing Plan and Trust

Plan Sequence Number	Trust Identification Number (if applicable)	Account Number
001	**75-3056237**	

ALLOCATION GROUPS

The following allocation groups shall apply in addition to those identified in the Adoption Agreement. *(Specify the groups by category of Qualifying Participant, including both Highly Compensated Employees and non-Highly Compensated Employees.)*

Allocation Group 7: _____
Allocation Group 8: _____
Allocation Group 9: _____
Allocation Group 10: _____
Allocation Group 11: _____
Allocation Group 12: _____
Allocation Group 13: _____
Allocation Group 14: _____
Allocation Group 15: _____
Allocation Group 16: _____
Allocation Group 17: _____
Allocation Group 18: _____
Allocation Group 19: _____
Allocation Group 20: _____
Allocation Group 21: _____
Allocation Group 22: _____
Allocation Group 23: _____
Allocation Group 24: _____
Allocation Group 25: _____
Allocation Group 26: _____
Allocation Group 27: _____
Allocation Group 28: _____
Allocation Group 29: _____
Allocation Group 30: _____
Allocation Group 31: _____
Allocation Group 32: _____
Allocation Group 33: _____
Allocation Group 34: _____
Allocation Group 35: _____
Allocation Group 36: _____
Allocation Group 37: _____
Allocation Group 38: _____
Allocation Group 39: _____
Allocation Group 40: _____
Allocation Group 41: _____

Allocation Group 42: _____
Allocation Group 43: _____
Allocation Group 44: _____
Allocation Group 45: _____
Allocation Group 46: _____
Allocation Group 47: _____
Allocation Group 48: _____
Allocation Group 49: _____
Allocation Group 50: _____

Exhibit 21.1

Subsidiaries

Name	Jurisdiction of Incorporation or Organization
Advanced Genetic Technologies, Inc.	Florida

Exhibit 31.1

Certification of Chief Executive Officer

I, Kenneth J. Van Ness, certify that:

1. I have reviewed this Annual Report on Form 10-K/A of CytoDyn Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonable 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: August 4, 2011

By: /s/ Kenneth J. Van Ness
Name: Kenneth J. Van Ness
Title: President and Chief Executive Officer

Exhibit 31.2

Certification of the Chief Financial Officer

I, Andrew T. Libby, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K/A of CytoDyn Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonable 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: August 4, 2011

By: /s/ Andrew T. Libby, Jr.
Name: Andrew T. Libby, Jr.
Title: Chief Financial Officer

Exhibit 32.1

Certification of the Chief Executive Officer

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 Annual Report of CytoDyn Inc. (the "Company") on Form 10-K/A for the fiscal year ended May 31, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-K/A"), I, Kenneth J. Van Ness, President and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Form 10-K/A fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) The information contained in the Form 10-K/A fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2011

By: /s/ Kenneth J. Van Ness
Name: Kenneth J. Van Ness
Title: President and Chief Executive Officer

Exhibit 32.2

Certification of the Chief Financial Officer

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 Annual Report of CytoDyn Inc. (the "Company") on Form 10-K/A for the fiscal year ended May 31, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-K/A"), I, Andrew T. Libby, Jr., Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Form 10-K/A fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) The information contained in the Form 10-K/A fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 4, 2011

By: /s/ Andrew T. Libby, Jr.
Name: Andrew T. Libby, Jr.
Title: Chief Financial Officer