

Exhibit D
Mutual Nondisclosure Agreement

This MUTUAL Non-Disclosure Agreement (the “Mutual NDA”), dated as of July 29, 2013 (the “Effective Date”), by and among Cytori Therapeutics, Inc., a Delaware corporation with its principal place of business located at 3020 Callan Road, San Diego, CA 92121, U.S.A. (“Cytori”), and BIMINI TECHNOLOGIES LLC, a corporation with its principal office at 3020 Callan Road, San Diego, CA 92121 (“Bimini”). Cytori and Bimini may each individually be referred to herein as a “Party” and collectively as the “Parties,” as the context may require.

RECITALS

WHEREAS, Cytori has acquired, developed and possesses, through the expenditure of considerable time, effort and money, certain proprietary products and intellectual property rights (including medical devices, techniques and therapies, know-how, patents, patent applications and technical trade secrets) in connection with regenerative cell technology, cell/tissue banking technology, and adipose tissue processing and preparation technology used to carry out regenerative cell therapies and autologous fat transplantation (“Cytori Technology”); and

WHEREAS, Cytori and Bimini have entered into the SALE AND EXCLUSIVE LICENSE / SUPPLY AGREEMENT by and between Cytori and Bimini, dated as of July 29, 2013 (the “SLSA”);

WHEREAS, on and subject to the terms and conditions set forth herein, and in accordance with the SLSA, the Parties desire to exchange confidential information and materials with each other (from time to time in connection with the manufacturing and supply of the Puregraft Products and Celution Products (as defined in the SLSA).

WHEREAS, Cytori and Bimini are willing to disclose and receive such confidential information and materials under the terms and conditions set forth in this Mutual NDA.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1) Definitions.

1.1 “Confidential Information” shall mean (a) any information disclosed by or on behalf of one party (“Disclosing Party”) to another party (“Receiving Party”), marked as confidential if in written (including electronic) form, or if in oral form, if followed by a writing confirming that the information is “Confidential” within thirty (30) business days after oral disclosure, (b) any information, whether or not such materials are marked or confirmed as confidential, that is treated as confidential by the Disclosing Party, and is reasonably understood to be the Disclosing Party’s confidential information, and (c) information designated as “Technology & Source Codes in Escrow” (as defined in the SLSA), including but not limited to information related to the Celution Products manufacturing technology and software codes as well as the PureGraft Product manufacturing technology. For the avoidance of doubt, “Confidential Information” shall

also include, without limitation, financial or business information of the Parties, tangible materials containing Confidential Information, such as, among other things, technical information, written or printed documents, processes and raw material reduced to formulae, and computer print-outs, disks, memory devices or tapes, whether machine or user readable; objects of a proprietary nature, including, without limitation, specifications, biochemical and biological materials, reagents, samples, models, and prototypes, regardless of whether such Confidential Information is related to the Puregraft and/or Cytori Product(s) (as defined in the SLSA), or any matter relating to this Mutual NDA; and any proprietary information of a third party which has been entrusted to the Disclosing Party.

1.2 “Affiliate” shall mean, as to any Party, any Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Party, where “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means (a) the beneficial ownership of fifty percent (50%) or more of the outstanding voting securities of a Party, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Party, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

2) Obligations.

2.1 The Receiving Party shall hold in confidence and not use or disclose (except solely as permitted in Paragraph 4, below, and subject to the terms and conditions of Paragraph 4) Confidential Information of the Disclosing Party for any purposes other than those set forth in the SLSA (the “Purpose”). The Receiving Party shall treat the Confidential Information of the Disclosing Party as it would its own proprietary information, and shall take all reasonable precautions to prevent the disclosure of the Disclosing Party’s Confidential Information to any third party, other than an Affiliate (as defined in the SLSA) of the Receiving Party which agrees to also be bound by this Mutual NDA, without the prior written consent of the Disclosing Party.

2.2 The rights and obligations set forth herein shall commence on the Effective Date and shall continue in full force and effect for the duration of the term of the SLSA, unless earlier terminated as provided per the termination provisions in the SLSA. In such case of earlier termination, such rights and obligations set forth herein shall expire seven (7) years from the date of termination. However, such rights and obligations shall run in perpetuity for information designated as “Trade Secret” by the Disclosing Party at the time of disclosure.

3) Exceptions.

3.1 Each Party shall be prospectively relieved of any and all obligations under Paragraph 2 of this Mutual NDA regarding information of the Disclosing Party which:

- (a) is or becomes a part of the public domain through no fault of the Receiving Party or any party to whom the Receiving Party has disclosed the information pursuant to Paragraph 4, below; or
- (b) the Receiving Party can demonstrate was in its rightful possession, without a restriction on use or disclosure, prior to receipt of the information from the Disclosing Party or an entity acting on its behalf; or

- (c) the Receiving Party can demonstrate was rightfully received from a third party without a restriction on use or disclosure; or
- (d) the Receiving Party can demonstrate by written evidence was independently developed by the Receiving Party without access to or use of (directly or indirectly) Confidential Information of the Disclosing Party; or
- (e) is required to be, and is, disclosed in response to a valid order from a judicial or administrative authority; provided, however, that the Receiving Party shall promptly notify the Disclosing Party upon its receipt of such order, shall use commercially reasonable efforts to limit disclosure, and shall make commercially reasonable efforts to obtain confidential treatment or a protective order for the disclosure so ordered, and prior to such disclosure to permit the Disclosing Party to oppose same by appropriate legal action.

3.2 Confidential Information that is disclosed in accordance with this Mutual NDA shall not be deemed to be in the public domain merely because any part of the Confidential Information is embodied in general disclosures, or because individual features, components or combinations of the Confidential Information or portions thereof are now or become known to the public.

- 4) Permitted Disclosure to Representatives. The Receiving Party shall disclose the Disclosing Party's Confidential Information (a) only to its employees, agents, consultants or independent contractors (the "Representatives") on a "need to know" basis and solely in furtherance of the Purpose; and (b) only if each such Representative shall have first entered into a written agreement with the Receiving Party whereby such Representative agrees to be bound by similar or more stringent obligations of nonuse and nondisclosure pertaining to the Confidential Information as those imposed on the Receiving Party under this Mutual NDA. The Receiving Party shall ensure that such Representatives comply with such obligations.
- 5) Return or Destruction of Confidential Information. Upon the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of the Confidential Information of the Disclosing Party; provided however, that the Receiving Party may retain one copy of such Confidential Information in its legal files for archival/compliance purposes only.
- 6) No Other Rights. Nothing herein shall be construed (a) to grant to the Receiving Party any express or implied option, license or other right, title or interest in or ownership to the Confidential Information of the Disclosing Party; (b) to grant to the Receiving Party any option, license or right under any other intellectual property rights of the Disclosing Party; or (c) to obligate a Party to enter into any additional agreement granting any of the foregoing, by implication or otherwise.
- 7) Remedy. The Receiving Party acknowledges and agrees that, due to the unique nature of the Confidential Information of the Disclosing Party, any unauthorized disclosure or use of the Disclosing Party's Confidential Information may cause great or irreparable harm to the Disclosing Party, for which damages would not afford an adequate remedy. The Receiving Party further agrees that the Disclosing Party shall therefore have the right to seek and to obtain immediate temporary, preliminary and/or permanent injunctive relief, without any requirement to post a bond or other security, in addition to any other rights and remedies it may have at law or in equity.

- 8) Waiver. A Party's failure to require any other Party to comply with any provision of this Mutual NDA shall not be deemed a waiver of such provision or any other provision of this Mutual NDA.
- 9) Amendment; Severability. Any modification to or waiver of this Mutual NDA must be made in writing and signed by all Parties, or else it shall not be effective. If any court of competent jurisdiction determines that any provision of this Mutual NDA is partially or wholly unenforceable under applicable law, such provision shall be construed or reformed so as to render it enforceable to the maximum extent permitted by applicable law, and the remaining provisions of this Mutual NDA shall remain in full force and effect.
- 10) Entire Understanding. This Mutual NDA shall constitute the entire understanding by and among the Parties with respect to the subject matter hereof, and any prior less restrictive oral and written understandings and agreements regarding Confidential Information are hereby superseded with respect to any disclosures of Confidential Information after the Effective Date. To the extent any previous non-disclosure or non-use agreement among the Parties, or between any two Parties, is more stringent than, or is equally stringent as, this Mutual NDA in any regard, then in that regard it shall remain effective in addition to the corresponding provisions of this Mutual NDA.
- 11) Governing Law. This Mutual NDA shall be construed and interpreted in accordance with the laws of the State of New York, without regard to its choice of law principles.

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IN WITNESS WHEREOF, the Parties by their duly authorized representatives have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

CYTORI THERAPEUTICS, INC

By: /s/ Christopher J. Calhoun

Name: Christopher J. Calhoun

Title: Chief Executive Officer

Date: July 29, 2013

BIMINI TECHNOLOGIES LLC

By: /s/ Bradford A. Conlan

Name: Bradford A. Conlan

Title: Chief Executive Officer

Date: July 29, 2013