

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **September 16, 2016**

**CAPRICOR THERAPEUTICS, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation)

**001-34058**  
(Commission  
File Number)

**88-0363465**  
(IRS Employer  
Identification No.)

**8840 Wilshire Blvd., 2nd Floor**  
**Beverly Hills, CA 90211**  
(Address of Principal Executive Offices) (Zip Code)

**(310) 358-3200**  
Registrant's telephone number, including area code

**N/A**  
(Former Name, or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

On September 16, 2016, Capricor Therapeutics, Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with Roth Capital Partners, LLC and National Securities Corporation as representatives (the “Representatives”) of the several underwriters named therein (the “Underwriters”), relating to a public offering (the “Offering”) of 2,687,500 shares (the “Firm Shares”) of the Company’s common stock (“Common Stock”) at a price of \$3.20 per share. On the same date, the Company entered into a subscription agreement (the “Subscription Agreement”) with Cedars-Sinai Medical Center, one of the Company’s existing stockholders, relating to a registered direct offering of 312,500 shares (the “CSMC Shares” and together with the Firm Shares, the “Shares”) of Common Stock. Additionally, pursuant to the terms of the Underwriting Agreement, the Company granted to the Underwriters an option, exercisable in whole or in part at any time until October 16, 2016, to purchase up to an additional 403,125 shares (the “Option Shares”) of Common Stock at the public offering price of \$3.20 per share to cover over-allotments, if any. The transactions described in this paragraph are referred to collectively as the “Offering.”

The Offering is being made pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-207149), as filed by the Company with the Securities and Exchange Commission (the “SEC”) on September 28, 2015 and which was declared effective by the SEC on October 26, 2015, a base prospectus dated September 25, 2015 and the final prospectus supplement dated September 16, 2016.

The Company expects that the net proceeds from the Offering will be approximately \$8.7 million, after deducting underwriting discounts and commissions and estimated Offering expenses payable by the Company (and excluding the sale of Option Shares, if any, pursuant to the over-allotment option granted to the Underwriters). If the over-allotment option granted to the Underwriters is exercised in full, net proceeds from the Offering are expected to be approximately \$9.9 million, after deducting underwriting discounts and commissions and estimated Offering expenses payable by the Company. The purchase and sale of the Shares, and the closing of the Offering, is expected to take place on or about September 21, 2016, subject to the satisfaction of customary closing conditions.

The Underwriting Agreement contains customary representations, warranties and covenants by the Company. It also provides for customary indemnification by each of the Company and the Underwriters, severally and not jointly, for losses or damages arising out of or in connection with the Offering, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties and termination provisions. In addition, in accordance with the terms of the Underwriting Agreement, each of the Company’s directors and executive officers and certain of the Company’s principal stockholders have entered into “lock-up” agreements with the Representatives that, among other things, prohibit, without the prior written consent of each of the Representatives, the sale, transfer or other disposition of securities of the Company until December 15, 2016, subject to certain limited exceptions. The Subscription Agreement contains customary representations, warranties and covenants by the Company.

The foregoing descriptions of the Underwriting Agreement and the Subscription Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Underwriting Agreement, a copy of which is filed as Exhibit 1.1 to this Current Report on Form 8-K, and to the full text of the Subscription Agreement, a copy of which is filed as Exhibit 1.2 to this Current Report on Form 8-K, each of which is incorporated herein by reference. A copy of the opinion of Paul Hastings LLP relating to the validity of the Shares is filed as Exhibit 5.1 to this Current Report on Form 8-K.

The representations, warranties and covenants contained in the Underwriting Agreement and the Subscription Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the Underwriting Agreement and the Subscription Agreement, respectively, and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Underwriting Agreement and the Subscription Agreement are incorporated herein by reference only to provide investors with information regarding the terms of the Underwriting Agreement and the Subscription Agreement, and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company’s periodic reports and other filings with the SEC.

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### Forward-Looking Statements

Statements in this Current Report on Form 8-K relating to the anticipated closing of the Offering and the amount of proceeds expected from the Offering, and any other statements about the Company's management team's future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements that are not statements of historical fact (including statements containing the words "believes," "plans," "could," "anticipates," "expects," "estimates," "should," "target," "will," "would" and similar expressions) should also be considered to be forward-looking statements. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward-looking statements, including, without limitation, risks and uncertainties with respect to the Company's ability to satisfy certain conditions to closing on a timely basis or at all, market conditions, and other related risks. More information about these and other risks that may impact the Company's business are set forth in the Company's Annual Report on Form 10-K for the year ended December 31, 2015, as filed with the SEC on March 30, 2016, in its Registration Statement on Form S-3, as filed with the SEC on September 28, 2015, and in its Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, as filed with the SEC on August 15, 2016. All forward-looking statements in this Current Report on Form 8-K are based on information available to the Company as of the date of this Current Report on Form 8-K, and the Company assumes no obligation to update these forward-looking statements.

#### **Item 8.01. Other Events.**

On September 16, 2016, the Company issued a press release announcing the pricing of the Offering. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

#### **Item 9.01. Financial Statements and Exhibits.**

##### **(d) Exhibits.**

<u>Number</u>	<u>Description</u>
1.1	Underwriting Agreement, dated as of September 16, 2016, by and among Capricor Therapeutics, Inc., Roth Capital Partners, LLC and National Securities Corporation.
1.2	Subscription Agreement, , dated as of September 16, 2016, by and between Capricor Therapeutics, Inc. and Cedars-Sinai Medical Center.
5.1	Opinion of Paul Hastings LLP.
23.1	Consent of Paul Hastings LLP (included in Exhibit 5.1).
99.1	Press Release, dated September 16, 2016.

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**SIGNATURES**

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

Date: September 16, 2016

**CAPRICOR THERAPEUTICS, INC.**

By: /s/ Linda Marbán, Ph.D. \_\_\_\_\_

Linda Marbán, Ph.D.

Chief Executive Officer

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**Exhibit Index**

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2,687,500 Shares

CAPRICOR THERAPEUTICS, INC.

Common Stock

UNDERWRITING AGREEMENT

September 16, 2016

Roth Capital Partners, LLC  
888 San Clemente Drive  
Newport Beach, California 92660

National Securities Corporation  
410 Park Avenue, 14<sup>th</sup> Floor  
New York, NY 10022

As Representatives of the Several Underwriters

Ladies and Gentlemen:

Capricor Therapeutics, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions contained herein, to sell to you and the other underwriters named on Schedule I to this Agreement (the "Underwriters"), for whom you are acting as representatives (the "Representatives"), an aggregate of 2,687,500 shares (the "Firm Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"). The respective amounts of the Firm Shares to be purchased by each of the several Underwriters are set forth opposite their names on Schedule I hereto. In addition, the Company proposes to grant to the Underwriters an option to purchase up to an additional 403,125 shares (the "Option Shares") of Common Stock from the Company for the purpose of covering over-allotments in connection with the sale of the Firm Shares. The Firm Shares and the Option Shares are collectively called the "Shares."

The Company has prepared and filed in conformity with the requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the published rules and regulations thereunder (the "Rules") adopted by the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (No. 333-207149), including the related prospectus included therein (the "Base Prospectus") relating to Common Stock that may be sold from time to time by the Company in accordance with Rule 415 of the Securities Act, and such amendments thereof as may have been required to the date of this Agreement. Copies of such Registration Statement (including all amendments thereof and all documents deemed incorporated by reference therein) and of the related Base Prospectus have heretofore been delivered by the Company or are otherwise available to you.

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The term "Registration Statement" as used in this Agreement means the registration statement on Form S-3 (No. 333-207149), including all exhibits, financial schedules and all documents and information deemed to be part of the Registration Statement by incorporation by reference or otherwise, as amended from time to time, including the information (if any) contained in the form of final prospectus filed with the Commission pursuant to Rule 424(b) of the Rules and deemed to be part thereof at the time of effectiveness pursuant to Rule 430B of the Rules.

If the Company has filed an abbreviated registration statement to register additional Shares pursuant to Rule 462(b) under the Rules (the "462(b) Registration Statement"), then any reference herein to the Registration Statement shall also be deemed to include such 462(b) Registration Statement. The term "Preliminary Prospectus" means the Base Prospectus, any preliminary prospectus supplement used or filed with the Commission pursuant to Rule 424 of the Rules, in the form provided to the Underwriters by the Company for use in connection with the offering of the Shares. The term "Prospectus" means the Base Prospectus, any Preliminary Prospectus and any amendments or further supplements to such prospectus, and including, without limitation, the final prospectus supplement, filed pursuant to and within the limits described in Rule 424(b) with the Commission in connection with the proposed sale of the Shares contemplated by this Agreement through the date of such final prospectus supplement. The term "Effective Date" shall mean each date that the Registration Statement and any post-effective amendment or amendments thereto became or become effective. Unless otherwise stated herein, any reference herein to the Registration Statement, any Preliminary Prospectus, the Statutory Prospectus (as hereinafter defined) and the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein, including pursuant to Item 12 of Form S-3 under the Securities Act, which were filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act") on or before the date hereof or are so filed hereafter. Any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus, the Statutory Prospectus or the Prospectus shall be deemed to refer to and include any such document filed or to be filed under the Exchange Act after the date of the Registration Statement, any such Preliminary Prospectus, the Statutory Prospectus or Prospectus, as the case may be, and deemed to be incorporated therein by reference.

The Company hereby confirms that the Underwriters have been authorized to distribute or cause to be distributed each Preliminary Prospectus, and each Issuer Free Writing Prospectus (as hereinafter defined) and are authorized to distribute the Prospectus (as from time to time amended or supplemented if the Company furnishes amendments or supplements thereto to the Underwriters).

1. Sale, Purchase, Delivery and Payment for the Shares On the basis of the representations, warranties and agreements contained in, and subject to the terms and conditions of, this Agreement:

(a) The Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$2.98 per share (the "Initial Price"), the number of Firm Shares set forth opposite the name of such Underwriter under the column "Number of Firm Shares to be Purchased" on Schedule I to this Agreement, subject to adjustment in accordance with Section 8 hereof.

(b) The Company hereby grants to the several Underwriters an option to purchase, severally and not jointly, all or any part of the Option Shares at the Initial Price (or at such other price agreed by the Company and the Representatives). The number of Option Shares to be purchased by each Underwriter shall be the same percentage (adjusted by the Representatives to eliminate fractions) of the total number of Option Shares to be purchased by the Underwriters as such Underwriter is purchasing of the Firm Shares. Such option may be exercised only to cover over-allotments in the sales of the Firm Shares by the Underwriters and may be exercised in whole or in part at any time on or before 12:00 noon, New York City time, on the business day before the Firm Shares Closing Date (as defined below), and from time to time thereafter within 30 days after the date of this Agreement, in each case upon written, facsimile or telegraphic notice, or verbal or telephonic notice confirmed by written, facsimile or telegraphic notice, by the Representatives to the Company no later than 12:00 noon, New York City time, on the business day before the Firm Shares Closing Date or at least one business day before the Option Shares Closing Date (as defined below), as the case may be, setting forth the number of Option Shares to be purchased and the time and date (if other than the Firm Shares Closing Date) of such purchase.

(c) Payment of the purchase price for the Firm Shares shall be made at the offices of Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018, at 10:00 a.m., New York City time, on the third business day following the date of this Agreement or at such time on such other date, not later than ten (10) business days after the date of this Agreement, as shall be agreed upon by the Company and the Representatives (such time and date of delivery and payment are called the "Firm Shares Closing Date"). In addition, in the event that any or all of the Option Shares are purchased by the Underwriters, payment of the purchase price for such Option Shares shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each date of delivery as specified in the notice from the Representatives to the Company (such time and date of delivery and payment are called the "Option Shares Closing Date"). The Firm Shares Closing Date and any Option Shares Closing Date are called, individually, a "Closing Date" and, together, the "Closing Dates."

(d) Payment shall be made to the Company by wire transfer of immediately available funds payable in New York Clearing House (same day) funds drawn to the order of the Company, against delivery of the Firm Shares to the account of the Representatives for the respective accounts of the Underwriters.

(e) If the Representatives so elect, delivery of the Firm Shares or the Option Shares may be made by credit through full fast transfer to the accounts at the Depository Trust Company designated by the Representatives for the account of such Underwriters. Certificates evidencing the Shares shall be registered in such names and shall be in such denominations as the Representatives shall request at least two full business days before the Firm Shares Closing Date or, in the case of Option Shares, on the day of notice of exercise of the option as described in Section 1(b).



2. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter as of the date hereof, as of the Firm Shares Closing Date and as of each Option Shares Closing Date (if any), as follows:

(a) The Company meets the requirements for use of Form S-3 under the Securities Act. The Company filed with the Commission the Registration Statement on such Form, including a Base Prospectus, for registration under the Securities Act of the offering and sale of the Shares, and the Company has prepared and used a Preliminary Prospectus in connection with the offer and sale of the Shares. When the Registration Statement or any amendment thereof or supplement thereto was or is declared effective, it (i) complied or will comply in all material respects, with the requirements of the Securities Act, the Rules, the Exchange Act and the rules and regulations of the Commission thereunder and (ii) did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. When any Preliminary Prospectus or Prospectus was first filed with the Commission (whether filed as part of the Registration Statement or any amendment thereto or pursuant to Rule 424 of the Rules) and when any amendment thereof or supplement thereto was first filed with the Commission, such Preliminary Prospectus or Prospectus as amended or supplemented complied in all material respects with the applicable provisions of the Securities Act and the Rules and did not or will not, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. If applicable, each Preliminary Prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to the Commission's Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"), except to the extent permitted by Regulation S-T. Notwithstanding the foregoing, none of the representations and warranties in this Section 2(a) shall apply to statements in, or omissions from, the Registration Statement, any Preliminary Prospectus or the Prospectus made in reliance upon, and in conformity with, information herein or otherwise furnished in writing by the Representatives on behalf of the several Underwriters specifically for use in the Registration Statement, any Preliminary Prospectus or the Prospectus. With respect to the preceding sentence, the Company acknowledges that the only information furnished in writing by the Representatives for use in the Registration Statement, any Preliminary Prospectus or the Prospectus is the statements contained in the fifth and eleventh paragraphs under the caption "Underwriting" in the Prospectus (collectively, the "Underwriting Information").

(b) As of the Applicable Time (as hereinafter defined), neither (i) the Registration Statement, the Base Prospectus, the Statutory Prospectus, the information included on Schedule II hereto and any information or documents deemed to be incorporated by reference to the foregoing (collectively, the "General Disclosure Package"), nor (ii) any individual Issuer Free Writing Prospectus when considered together with the General Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to statements in or omissions in the General Disclosure Package made in reliance upon and in conformity with the Underwriting Information.

Each Issuer Free Writing Prospectus (as hereinafter defined), including any electronic road show (including without limitation any “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act) (each, a “Road Show”) (i) is identified in Schedule III hereto and (ii) complied when issued, and complies, in all material respects with the requirements of the Securities Act, the Rules, the Exchange Act and the rules and regulations of the Commission thereunder.

As used in this Section and elsewhere in this Agreement:

“Applicable Time” means 9:00 a.m. (Eastern time) on the date of this Agreement.

“Issuer Free Writing Prospectus” means each “free writing prospectus” (as defined in Rule 405 of the Rules) prepared by or on behalf of the Company or used or referred to by the Company in connection with the offering of the Shares, including, without limitation, each Road Show.

“Statutory Prospectus” as of any time means the Preliminary Prospectus relating to the Shares that is included in the Registration Statement immediately prior to the Applicable Time, including the Base Prospectus and any document incorporated by reference therein and any prospectus supplement deemed to be a part thereof.

(c) The Registration Statement is effective under the Securities Act and no stop order preventing or suspending the effectiveness of the Registration Statement or suspending or preventing the use of any Preliminary Prospectus, the Prospectus or any “free writing prospectus”, as defined in Rule 405 under the Rules, has been issued by the Commission and no proceedings for that purpose have been instituted or are threatened under the Securities Act. Any required filing of any Preliminary Prospectus and/or the Prospectus and any supplement thereto pursuant to Rule 424(b) of the Rules has been or will be made in the manner and within the time period required by such Rule 424(b). Any material required to be filed by the Company pursuant to Rule 433(d) or Rule 163(b)(2) of the Rules has been or will be made in the manner and within the time period required by such Rules.

(d) The documents incorporated by reference in the Registration Statement, any Preliminary Prospectus and the Prospectus, at the time they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and any further documents so filed and incorporated by reference in the Registration Statement, any Preliminary Prospectus and the Prospectus, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(e) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Shares or until any earlier date that the Company notified or notifies the Representatives as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, including any document incorporated by reference therein and any prospectus supplement deemed to be a part thereof that has not been superseded or modified, the Statutory Prospectus or the Prospectus.

If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, the Statutory Prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances prevailing at the subsequent time, not misleading, the Company has promptly notified or will promptly notify the Representatives and has promptly amended or will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(f) The financial statements of the Company (including all notes and schedules thereto) included in the Registration Statement, the Statutory Prospectus and Prospectus present fairly the financial position of the Company and its consolidated subsidiary, Capricor, Inc., at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiary for the periods specified; and such financial statements and related schedules and notes thereto, and the unaudited financial information filed with the Commission as part of the Registration Statement, have been prepared in conformity with generally accepted accounting principles, consistently applied throughout the periods involved. The summary and selected financial data included in the Statutory Prospectus and Prospectus present fairly the information shown therein as at the respective dates and for the respective periods specified and have been presented on a basis consistent with the consolidated financial statements set forth in the Prospectus and other financial information. The pro forma financial information and the related notes thereto included or incorporated by reference in each of the Statutory Prospectus and the Prospectus presents fairly the information shown therein as at the respective dates and for the respective periods specified and has been prepared in accordance with the Commission's rules and guidance with respect to pro forma financial information, and the assumptions underlying such pro forma financial information are reasonable and are set forth in each of the Statutory Prospectus and the Prospectus.

(g) Rose, Snyder & Jacobs LLP (the "Auditor") whose reports are filed with the Commission as a part of the Registration Statement, are and, during the periods covered by their reports, were independent public accountants as required by the Securities Act and the Rules.

(h) Each of the Company and Capricor, Inc., its sole subsidiary (“Subsidiary”), is duly incorporated, validly existing and in good standing under the laws of their respective jurisdictions of incorporation and each such entity has all requisite corporate power and authority to carry on its business as is currently being conducted as described in the Statutory Prospectus and the Prospectus, and to own, lease and operate its properties. All of the issued shares of capital stock of the Subsidiary have been duly and validly authorized and issued and are fully paid and non-assessable and are owned, directly or indirectly, by the Company, free and clear of any lien, charge, mortgage, pledge, security interest, claim, limitation on voting rights, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever; provided that as described in the Prospectus, the Company is restricted under the Loan Agreement with the California Institute for Regenerative Medicine (“CIRM”) (the “CIRM Loan Agreement”; the CIRM Loan Agreement and any other written agreements with CIRM, collectively, the “CIRM Agreements”) from issuing or receiving any dividends (other than dividends payable by the Subsidiary to the Company solely in shares of the Subsidiary’s common stock). Each of the Company and the Subsidiary is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted by it or location of the assets or properties owned, leased or licensed by it requires such qualification, except for such jurisdictions where the failure to so qualify individually or in the aggregate would not have a material adverse effect on the assets, properties, condition, financial or otherwise, or in the results of operations, business affairs or business prospects of the Company and the Subsidiary considered as a whole (a “Material Adverse Effect”); and to the Company’s knowledge, no proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification.

(i) The Registration Statement initially became effective within three years of the date hereof. If, immediately prior to the third anniversary of the initial effective date of the Registration Statement, any of the Shares remain unsold by the Underwriters, the Company will, prior to that third anniversary file, if it has not already done so, a new shelf registration statement relating to the Shares, in a form satisfactory to the Representatives, will use its best efforts to cause such registration statement to be declared effective within 180 days after that third anniversary, and will take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated in the expired Registration Statement. References herein to the Registration Statement relating to the Shares shall include such new shelf registration statement.

(j) Each of the Company and the Subsidiary has all necessary authorizations, approvals, consents, orders, licenses, certificates and permits of and from all governmental or regulatory bodies or any other person or entity (collectively, the “Permits”), to own, lease and license its assets and properties and conduct its business, all of which are valid and in full force and effect, except where the lack of such Permits, individually or in the aggregate, would not have a Material Adverse Effect. Each of the Company and the Subsidiary has fulfilled and performed in all material respects all of its obligations with respect to such Permits and to its knowledge, no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the Company thereunder. Except as may be required under the Securities Act and state and foreign Blue Sky laws, no other Permits are required to enter into, deliver and perform this Agreement and to issue and sell the Shares.

(k) (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the Rules) of the Shares and (ii) at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405 of the Rules, including (but not limited to) the Company or the Subsidiary in the preceding three years not having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 of the Rules.

(l) To the knowledge of the Company, the Company and the Subsidiary owns or possesses the valid right to use all (i) valid and enforceable patents, patent applications, trademarks, trademark registrations, service marks, service mark registrations, Internet domain name registrations, copyrights, copyright registrations, licenses, trade secret rights (“Intellectual Property Rights”) and (ii) inventions, software, works of authorships, trade marks, service marks, trade names, databases, formulae, know how, Internet domain names and other intellectual property (including trade secrets and other unpatented and/or unpatentable proprietary confidential information, systems, or procedures) (collectively, “Intellectual Property Assets”) necessary to conduct their respective businesses as currently conducted, and as proposed to be conducted and described in the General Disclosure Package and the Prospectus; provided, that CIRM has certain “march-in” rights with respect to the Company’s Intellectual Property Rights as set forth in the CIRM Agreements and the National Institutes of Health has reserved certain rights in connection with its grants to the Subsidiary. Neither the Company nor the Subsidiary has received any opinion from their legal counsel concluding that any activities of their respective businesses infringe, misappropriate, or otherwise violate, valid and enforceable Intellectual Property Rights of any other person that is reasonably likely to result, individually or in aggregate, in a Material Adverse Effect, and have not received written notice of any challenge, which is to their knowledge still pending, by any other person to the rights of the Company and the Subsidiary with respect to any Intellectual Property Rights or Intellectual Property Assets owned or used by the Company or the Subsidiary that is reasonably likely to result, individually or in aggregate, in a Material Adverse Effect. To the knowledge of the Company, without having conducted any independent investigation, neither the Company’s nor the Subsidiary’s respective business as now conducted give rise to any infringement of, any misappropriation of, or other violation of, any valid and enforceable Intellectual Property Rights of any other person that is reasonably likely to result, individually or in aggregate, in a Material Adverse Effect. All licenses for the use of the Intellectual Property Rights described in the General Disclosure Package and the Prospectus are to the Company’s knowledge valid, binding upon, and enforceable by or against the parties thereto in accordance with their terms. Neither the Company nor the Subsidiary is in breach nor has received any asserted or threatened claim of breach of any Intellectual Property Rights, and the Company has no knowledge of any breach or anticipated breach by any other person of any Intellectual Property Rights that is reasonably likely to result, individually or in the aggregate, in a Material Adverse Effect. Except as described in the General Disclosure Package, no claim has been made against the Company or the Subsidiary alleging the infringement by the Company of any patent, trademark, service mark, trade name, copyright, trade secret, license in or other intellectual property right or franchise right of any person that is reasonably likely, individually or in the aggregate, to result in a Material Adverse Effect. The Company has taken all reasonable steps to protect, maintain and safeguard its Intellectual Property Rights, including the execution of appropriate nondisclosure and confidentiality agreements. To the knowledge of the Company, the consummation of the transactions contemplated by this Agreement will not result in the loss of, impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the Company’s or the Subsidiary’s right to own, use or hold for use any of the Intellectual Property Rights as owned, used or held for use in the conduct of their respective businesses as currently conducted. To the knowledge of the Company, each of the Company and the Subsidiary has at all times complied in all material respects with all applicable laws relating to privacy, data protection, and the collection and use of personal information collected, used or held for use by the Company and the Subsidiary in the conduct of the Company’s and the Subsidiary’s respective business. No claims have been asserted or threatened against the Company or the Subsidiary alleging a violation of any person’s privacy or personal information or data rights and the consummation of the transactions contemplated hereby will not breach or otherwise cause any violation of any law related to privacy, data protection, or the collection and use of personal information collected, used, or held for use, by the Company and the Subsidiary in the conduct of the Company’s and the Subsidiary’s respective business. Each of the Company and the Subsidiary takes reasonable measures to ensure that such information is protected against unauthorized access, use, modification, or other misuse. Each of the Company and the Subsidiary has taken all reasonable actions to obtain ownership of all works of authorship and inventions made by their employees, consultants and contractors during the time they were employed by or under contract with the Company or the Subsidiary and which relate to the Company’s and the Subsidiary’s business.

(m) Neither the Company nor the Subsidiary owns any real property, and the Company does not lease any real property. Except as described in the Prospectus with respect to its manufacturing facilities, all property held under lease by the Subsidiary is held by it under valid, existing and enforceable leases, free and clear of all liens, encumbrances, claims, security interests and defects, except such as are not material and do not materially interfere with the use made or proposed to be made of such property by the Company and the Subsidiary.

(n) Subsequent to the respective dates as of which information is given in the Registration Statement, the Statutory Prospectus and the Prospectus, (i) there has not been any event which could have a Material Adverse Effect; (ii) neither the Company nor the Subsidiary has sustained any loss or interference with its assets, businesses or properties (whether owned or leased) from fire, explosion, earthquake, flood or other calamity, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree which would have a Material Adverse Effect; and (iii) since the date of the latest balance sheet included in the Registration Statement and the Prospectus, except for the issuance and sale by the Company to Cedars-Sinai Medical Center of 312,500 shares of Common Stock contemporaneous with the transactions contemplated by this Agreement as described in the Statutory Prospectus and the Prospectus (the "CSMC Issuance"), neither the Company nor the Subsidiary has (A) issued any securities or incurred any liability or obligation, direct or contingent, for borrowed money, except such liabilities or obligations incurred in the ordinary course of business, and except that a grant provided by CIRM to the Subsidiary pursuant to a Grant Award entered into on June 16, 2016 may be treated as a loan at the Subsidiary's option, (B) entered into any transaction not in the ordinary course of business or (C) except for regular dividends on the Common Stock in amounts per share that are consistent with past practice, declared or paid any dividend or made any distribution on any shares of its stock or redeemed, purchased or otherwise acquired or agreed to redeem, purchase or otherwise acquire any shares of its capital stock.

(o) There is no document, contract or other agreement required to be described in the Registration Statement, the Statutory Prospectus or the Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed as required by the Securities Act or Rules. Each description of a contract, document or other agreement in the Registration Statement, the Statutory Prospectus or the Prospectus accurately reflects in all material respects the terms of the underlying contract, document or other agreement. Each contract, document or other agreement described in the Registration Statement, the Statutory Prospectus or the Prospectus or listed in the Exhibits to the Registration Statement or incorporated by reference is in full force and effect and is valid and enforceable by and against the Company or the Subsidiary, as the case may be, in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws relating to or affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity and, with respect to equitable relief, the discretion of the court before which any proceeding therefor may be brought, and with respect to indemnification thereunder, except as rights may be limited by applicable law or policies underlying such law. To the knowledge of the Company, neither the Company nor the Subsidiary, if the Subsidiary is a party, nor to the Company's knowledge, any other party is in default in the observance or performance of any term or obligation to be performed by it under any such agreement, and no event has occurred which with notice or lapse of time or both would constitute such a default, in any such case which default or event, individually or in the aggregate, would have a Material Adverse Effect. No default exists, and no event has occurred which with notice or lapse of time or both would constitute a default, in the due performance and observance of any term, covenant or condition, by the Company or the Subsidiary, if the Subsidiary is a party thereto, of any other agreement or instrument to which the Company or the Subsidiary is a party or by which the Company or its properties or business or the Subsidiary or its properties or business may be bound or affected which default or event, individually or in the aggregate, would have a Material Adverse Effect.

(p) The statistical, industry-related and market-related data included in the Registration Statement, the Statutory Prospectus or the Prospectus are based on or derived from sources that the Company reasonably and in good faith believes to be reliable and accurate.

(q) Neither the Company nor the Subsidiary (i) is in violation of its certificate of incorporation or by-laws, (ii) is in default under, and no event has occurred which, with notice or lapse of time, or both, would constitute a default under, or result in the creation or imposition of any lien, charge, mortgage, pledge, security interest, claim, limitation on voting rights, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever, upon, any property or assets of the Company or the Subsidiary pursuant to, any bond, debenture, note, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject or (iii) is in violation of any statute, law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, foreign or domestic, except (in the case of clauses (ii) and (iii) above) for violations or defaults that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(r) This Agreement has been duly authorized, executed and delivered by the Company.

(s) Neither the execution, delivery and performance of this Agreement by the Company nor the consummation of any of the transactions contemplated hereby (including, without limitation, the issuance and sale by the Company of the Shares) will give rise to a right to terminate or accelerate the due date of any payment due under, or conflict with or result in the breach of any term or provision of, or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or require any consent or waiver under, or result in the execution or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or the Subsidiary pursuant to the terms of, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or the Subsidiary is a party or by which either the Company or the Subsidiary or any of their properties or businesses is bound, or any franchise, license, permit, judgment, decree, order, statute, rule or regulation applicable to the Company or the Subsidiary or violate any provision of the charter or by-laws of the Company or the Subsidiary, except for such consents or waivers which have already been obtained and are in full force and effect.

(t) As of September 15, 2016, the Company had 50,000,000 shares of Common Stock authorized, 17,954,398 of which were issued and outstanding, and 5,000,000 shares of preferred stock authorized, none of which were issued and outstanding. All of the issued and outstanding shares of Common Stock have been duly and validly issued and are fully paid and nonassessable. Except for Company Stock Options (as defined below), there are no statutory preemptive or other similar rights to subscribe for or to purchase or acquire any shares of Common Stock of the Company or the Subsidiary or any such rights pursuant to its Certificate of Incorporation, as amended, or by-laws, as amended, or any agreement or instrument to or by which the Company or the Subsidiary is a party or bound. The Shares, when issued and sold pursuant to this Agreement, will be duly and validly issued, fully paid and nonassessable and none of them will be issued in violation of any preemptive or other similar right. Except as disclosed in the Registration Statement, the Statutory Prospectus and the Prospectus, or a document incorporated by reference therein, there is no outstanding option, warrant or other right calling for the issuance of, and there is no commitment, plan or arrangement to issue, any share of stock of the Company or the Subsidiary or any security convertible into, or exercisable or exchangeable for, such stock. The exercise price of each option to acquire Common Stock (each, a "Company Stock Option") is no less than the fair market value of a share of Common Stock as determined on the date of grant of such Company Stock Option. All grants of Company Stock Options were validly issued and properly approved by the Board of Directors of the Company (or its duly authorized Compensation Committee) in material compliance with all applicable laws and the terms of the plans under which such Company Stock Options were issued and were recorded on the Company's financial statements in accordance with GAAP, and no such grants involved any "back dating", "forward dating," "spring loading" or similar practices with respect to the effective date of grant. The Common Stock and the Shares conform in all material respects to all statements in relation thereto contained in the Registration Statement and the Statutory Prospectus and the Prospectus. All outstanding shares of capital stock of the Subsidiary have been duly authorized and validly issued, and are fully paid and nonassessable and are owned directly by the Company free and clear of any security interests, liens, encumbrances, equities or claims, other than those described in the Statutory Prospectus and the Prospectus.



(u) No holder of any security of the Company has any right, which has not been waived, to have any security owned by such holder included in the Registration Statement or, except for the resale registration rights granted with respect to the Common Stock underlying certain warrants registered for resale under the Company's existing Registration Statement on Form S-3 (No. 333-212017), to demand registration of any security owned by such holder for a period of 180 days after the date of this Agreement. Each director, executive officer and shareholder of the Company listed on Schedule IV hereto has delivered to the Representatives his or her enforceable written lock-up agreement in the form attached to this Agreement as Exhibit A hereto ("Lock-Up Agreement").

(v) There is no legal or governmental proceeding to which the Company or the Subsidiary is a party or of which any property or assets of the Company or the Subsidiary is the subject, including any proceeding before the United States Food and Drug Administration of the U.S. Department of Health and Human Services ("FDA") or comparable federal, state, local or foreign governmental bodies (it being understood that the interaction between the Company and the FDA and such comparable governmental bodies relating to the clinical development and product approval process shall not be deemed proceedings for purposes of this representation), which is required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or a document incorporated by reference therein and is not described therein, or which, singularly or in the aggregate, if determined adversely to the Company or the Subsidiary, could reasonably be expected to have a Material Adverse Effect; and to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others. Each of the Company and the Subsidiary is in compliance with all applicable federal, state, local and foreign laws, regulations, orders and decrees governing its business as prescribed by the FDA, or any other federal, state or foreign agencies or bodies engaged in the regulation of pharmaceuticals or biohazardous substances or materials, except where noncompliance would not, singularly or in the aggregate, have a Material Adverse Effect. Except for a Phase IIb clinical trial with Cenderitide for the treatment of acute heart failure conducted by the Company's predecessor-in-interest, Nile Therapeutics, Inc., which was temporarily placed on clinical hold by the FDA in 2009, all preclinical and clinical studies conducted by or on behalf of the Company and the Subsidiary to support approval for commercialization of the Company's or the Subsidiary's products have been conducted by the Company or the Subsidiary, as applicable, or to the Company's knowledge by third parties, in compliance with all applicable federal, state or foreign laws, rules, orders and regulations, except for such failure or failures to be in compliance as could not reasonably be expected to have, singularly or in the aggregate, a Material Adverse Effect.

(w) All necessary corporate action has been duly and validly taken by the Company and to authorize the execution, delivery and performance of this Agreement and the issuance and sale of the Shares by the Company.

(x) Neither the Company nor the Subsidiary is involved in any labor dispute nor, to the knowledge of the Company, is any such dispute threatened, which dispute would have a Material Adverse Effect. The Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers or contractors which would have a Material Adverse Effect. The Company is not aware of any threatened or pending litigation between the Company or the Subsidiary and any of its executive officers which, if adversely determined, could have a Material Adverse Effect and has no reason to believe that such officers will not remain in the employment of the Company.

(y) No transaction has occurred between or among the Company and any of its officers or directors, shareholders or any affiliate or affiliates of any such officer or director or shareholder that is required to be described in and is not described in the Registration Statement, the Statutory Prospectus and the Prospectus, or in any document incorporated by reference therein.

(z) The Company has not taken, nor will it take, directly or indirectly, any action designed to or which might reasonably be expected to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the Common Stock or any security of the Company to facilitate the sale or resale of any of the Shares.

(aa) Each of the Company and the Subsidiary has filed all Federal, state, local and foreign tax returns which are required to be filed through the date hereof, which returns are true and correct in all material respects or has received timely extensions thereof, and has paid all taxes shown on such returns and all assessments received by it to the extent that the same are material and have become due. There are no tax audits or investigations pending, which if adversely determined would have a Material Adverse Effect; nor are there any material proposed additional tax assessments against the Company or the Subsidiary.

(bb) The Shares have been duly authorized for listing on the NASDAQ Capital Market, subject to official notice of issuance. The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or listing of the Common Stock on the NASDAQ Capital Market, nor has the Company received any notification that the Commission or the NASDAQ Capital Market is contemplating terminating such registration or listing.

(cc) The books, records and accounts of the Company and the Subsidiary accurately and fairly reflect, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and the Subsidiary. The Company and the Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(dd) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act), which: (i) are designed to ensure that material information relating to the Company is made known to the Company's principal executive officer and its principal financial officer by others within the Company, particularly during the periods in which the periodic reports required under the Exchange Act are required to be prepared; (ii) provide for the periodic evaluation of the effectiveness of such disclosure controls and procedures at the end of the periods in which the periodic reports are required to be prepared; and (iii) are effective in all material respects to perform the functions for which they were established.

(ee) Based on the evaluation of its disclosure controls and procedures, the Company is not aware of (i) any material weakness or significant deficiency in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data or any material weaknesses in internal controls; or (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls.

(ff) Since the date of the most recent consolidated balance sheet of the Company and the Subsidiary reviewed or audited by the Auditor and the audit committee of the Board of Directors of the Company (the "Audit Committee"), (i) the Company has not be advised of (A) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company and the Subsidiary to record, process, summary and report financial data, or any material weaknesses in internal controls and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and the Subsidiary, and (ii) since that date, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses. Neither the Company nor its Audit Committee is reviewing or investigating, and neither the Company's independent auditors nor its internal auditors have recommended that the Company or its Audit Committee review or investigate (1) adding to, deleting, changing the application of, or changing the Company's disclosure with respect to, any of the Company's material accounting policies, or (2) any matter which could result in a restatement of the Company's financial statements for any annual or interim period during the current or prior three fiscal years.

(gg) Except as described in the Statutory Prospectus and the Prospectus and as preapproved in accordance with the requirements set forth in Section 10A of the Exchange Act, the Auditor has not been engaged by the Company to perform any "prohibited activities" (as defined in Section 10A of the Exchange Act).

(hh) Except as described in the Statutory Prospectus and the Prospectus, there are no material off-balance sheet arrangements (as defined in Item 303 of Regulation S-K) that have or are reasonably likely to have a material current or future effect on the Company's financial condition, revenues or expenses, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources.

(ii) The Company's Board of Directors has validly appointed the Audit Committee whose composition satisfies the requirements of Rule 5605(c)(2) of the Rules of the Nasdaq Stock Market (the "Nasdaq Rules") and the Company's Board of Directors and/or the Audit Committee has adopted a charter that satisfies the requirements of Rule 5605(c)(1) of the Nasdaq Rules. The Audit Committee has reviewed the adequacy of its charter in compliance with the Nasdaq Rules.

(jj) There is and has been no failure on the part of the Company or any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act applicable to such persons, including, without limitation, Section 402 related to loans and Sections 302 and 906 related to certifications.

(kk) The Company and the Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as reasonably determined by the Company; all policies of insurance and fidelity or surety bonds insuring the Company or the Subsidiary or the Company's or the Subsidiary's respective businesses, assets, employees, officers and directors are in full force and effect; the Company and the Subsidiary are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor the Subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(ll) Each approval, consent, order, authorization, designation, declaration or filing of, by or with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated required to be obtained or performed by the Company (except such additional steps as may be required by the Financial Industry Regulatory Authority ("FINRA") or may be necessary to qualify the Shares for public offering by the Underwriters under the state securities or Blue Sky laws) has been obtained or made and is in full force and effect.

(mm) Except as previously disclosed to the Underwriters, there are no affiliations with FINRA among the Company's officers, directors or, to the best of the knowledge of the Company, any five percent or greater stockholder of the Company, except as set forth in the Registration Statement or otherwise disclosed in writing to the Representatives.

(nn) (i) To the knowledge of the Company, each of the Company and the Subsidiary is in compliance in all material respects with all rules, laws and regulation relating to the use, treatment, storage and disposal of toxic substances and protection of health or the environment ("Environmental Law") which are applicable to its business; (ii) neither the Company nor the Subsidiary has received any notice from any governmental authority or third party of an asserted claim under Environmental Laws; (iii) to the knowledge of the Company, each of the Company and the Subsidiary has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business and is in compliance with all terms and conditions of any such permit, license or approval; (iv) to the Company's knowledge, no facts currently exist that will require the Company or the Subsidiary to make future material capital expenditures to comply with Environmental Laws; and (v) to the knowledge of the Company, no property which is or has been owned, leased or occupied by the Company or the Subsidiary has been designated as a Superfund site pursuant to the Comprehensive Environmental Response, Compensation of Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.) or otherwise designated as a contaminated site under applicable state or local law. Neither the Company nor the Subsidiary has been named as a "potentially responsible party" under the CER, CLA 1980.

(oo) [Intentionally omitted.]

(pp) The Company is not and, after giving effect to the offering and sale of the Shares and the application of proceeds thereof as described in the Statutory Prospectus and the Prospectus, will not be an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

(qq) To the knowledge of the Company, neither the Company nor any other person associated with or acting on behalf of the Company including, without limitation, any director, officer, agent or employee of the Company or the Subsidiary, has, directly or indirectly, while acting on behalf of the Company or the Subsidiary (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

(rr) To the knowledge of the Company, the operations of the Company and the Subsidiary are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or the Subsidiary with respect to the Money Laundering Laws is pending, or to the knowledge of the Company, threatened.

(ss) Neither the Company nor the Subsidiary nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or the Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to the Subsidiary, any joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(tt) Except as described in the Statutory Prospectus and the Prospectus, except for the Company’s issuance of shares of Common Stock and associated private placement of warrants for Common Stock in March 2016 and except for the CSMC Issuance, the Company has not sold or issued any shares of Common Stock during the six-month period preceding the date of the Prospectus, including any sales pursuant to Rule 144A under, or Regulations D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock options plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(uu) The Company has fulfilled its obligations, if any, under the minimum funding standards of Section 302 of the U.S. Employee Retirement Income Security Act of 1974 (“ERISA”) and the regulations and published interpretations thereunder with respect to each “plan” as defined in Section 3(3) of ERISA and such regulations and published interpretations in which its employees are eligible to participate and each such plan is in compliance in all material respects with the presently applicable provisions of ERISA and such regulations and published interpretations. No “Reportable Event” (as defined in ERISA) has occurred with respect to any “Pension Plan” (as defined in ERISA) for which the Company could have any liability.

(vv) None of the Company, its directors or its officers has distributed nor will distribute prior to the later of (i) the Firm Shares Closing Date, or the Option Shares Closing Date, and (ii) completion of the distribution of the Shares, any offering material in connection with the offering and sale of the Shares other than any Preliminary Prospectus, the Prospectus, the Registration Statement and other materials, if any, permitted by the Securities Act.

(ww) The Company is eligible to offer and sell securities under the Registration Statement (including the offer and sale of the Shares) in reliance on General Instruction I.B.6 of Form S-3. The aggregate market value of securities sold by or on behalf of the Company under the Registration Statement during the 12 month period immediately prior to, and including, the sale of Shares pursuant to this Agreement is no more than one-third of the aggregate market value of the voting and non-voting common equity held by non-affiliates of the Company, as determined pursuant to General Instruction I.B.6 of Form S-3.

3. Conditions of the Underwriters’ Obligations. The obligations of the Underwriters under this Agreement are several and not joint. The respective obligations of the Underwriters to purchase the Shares are subject to each of the following terms and conditions:

(a) [Reserved].

(b) No order preventing or suspending the use of any Preliminary Prospectus, the Prospectus or any “free writing prospectus” (as defined in Rule 405 of the Rules), shall have been or shall be in effect and no order suspending the effectiveness of the Registration Statement shall be in effect and no proceedings for such purpose shall be pending before or threatened by the Commission, and any requests for additional information on the part of the Commission (to be included in the Registration Statement or the Prospectus or otherwise) shall have been complied with to the satisfaction of the Commission and the Representatives.

(c) The representations and warranties of the Company contained in this Agreement and in the certificates delivered pursuant to Section 3(d) shall be true and correct when made and on and as of each Closing Date as if made on such date. The Company shall have performed all covenants and agreements and satisfied all the conditions contained in this Agreement required to be performed or satisfied by it at or before such Closing Date.

(d) The Representatives shall have received on each Closing Date a certificate, addressed to the Representatives and dated such Closing Date, of the chief executive or chief operating officer and the chief financial officer or chief accounting officer of the Company to the effect that: (i) the representations, warranties and agreements of the Company in this Agreement were true and correct when made and are true and correct as of such Closing Date; (ii) the Company has performed all covenants and agreements and satisfied all conditions contained herein, in each case, as required to be performed or satisfied by it at or before such Closing Date; (iii) they have carefully examined the Registration Statement, the Prospectus, the General Disclosure Package, and any individual Issuer Free Writing Prospectus and, in their opinion (A) as of the Effective Date the Registration Statement and Prospectus did not include, and as of the Applicable Time, neither (i) the General Disclosure Package, nor (ii) any individual Issuer Free Writing Prospectus, when considered together with the General Disclosure Package, included, any untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (B) since the Effective Date no event has occurred which should have been set forth in a supplement or otherwise required an amendment to the Registration Statement, the Statutory Prospectus or the Prospectus; and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and, to their knowledge, no proceedings for that purpose have been instituted or are pending under the Securities Act.

(e) The Representatives shall have received: (i) simultaneously with the execution of this Agreement a signed letter from the Auditor addressed to the Representatives and dated the date of this Agreement, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the General Disclosure Package, and (ii) on each Closing Date, a signed letter from the Auditor addressed to the Representatives and dated the date of such Closing Date(s), in form and substance reasonably satisfactory to the Representatives containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(f) The Representatives shall have received on each Closing Date from Paul Hastings LLP, counsel for the Company, an opinion and written statement, addressed to the Representatives and dated such Closing Date, in form and substance as is set forth on Exhibit B attached hereto.

(g) [Reserved.]

(h) [Reserved.]

(i) The Representatives shall have received on each Closing Date from Goodwin Procter LLP, counsel for the Underwriters, an opinion and written statement, addressed to the Representatives and dated such Closing Date, with respect to the validity of the Shares, the Registration Statement, the General Disclosure Package, the Prospectus and other related matters as the Representatives reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters.

(j) All proceedings taken in connection with the sale of the Firm Shares and the Option Shares as herein contemplated shall be reasonably satisfactory in form and substance to the Representatives and their counsel.

(k) The Representatives shall have received copies of the Lock-up Agreements executed by each person listed on Schedule IV hereto.

(l) The Shares shall have been approved for listing on the NASDAQ Capital Market.

(m) The Representatives shall be reasonably satisfied that since the respective dates as of which information is given in the Registration Statement, the Statutory Prospectus, the General Disclosure Package and the Prospectus, (i) there shall not have been any material change in the capital stock of the Company or any material change in the indebtedness (other than in the ordinary course of business) of the Company, (ii) except as set forth or contemplated by the Registration Statement, the Statutory Prospectus, the General Disclosure Package or the Prospectus, no material oral or written agreement or other transaction shall have been entered into by the Company that is not in the ordinary course of business, or that could reasonably be expected to result in a material reduction in the future earnings of the Company, (iii) no loss or damage (whether or not insured) to the property of the Company shall have been sustained that had or could reasonably be expected to have a Material Adverse Effect, (iv) no legal or governmental action, suit or proceeding affecting the Company or any of its properties that is material to the Company or that affects or could reasonably be expected to affect the transactions contemplated by this Agreement shall have been instituted or threatened and (v) there shall not have been any material change in the assets, properties, condition (financial or otherwise), or in the results of operations, business affairs or business prospects of the Company or the Subsidiary considered as a whole that makes it impractical or inadvisable in the Representatives' judgment to proceed with the purchase or offering of the Shares as contemplated hereby.

(n) As of the Firm Shares Closing Date, FINRA shall not have raised any objection with respect to the fairness and reasonableness of the underwriting terms and agreements in connection with the offering of the Shares.

(o) The Representatives shall have received on each Closing Date a Secretary's Certificate of the Company.

(p) The Company shall have furnished or caused to be furnished to the Representatives such further certificates or documents as the Representatives shall have reasonably requested.



4. Covenants and other Agreements of the Company and the Underwriters.

(a) The Company covenants and agrees as follows:

(i) The Company shall prepare the Prospectus in a form approved by the Representatives and file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by the Rules. The Company will file with the Commission all Issuer Free Writing Prospectuses in the time and manner required under Rules 433(d) or 163(b)(2), as the case may be.

(ii) The Company shall promptly advise the Representatives in writing (A) when any post-effective amendment to the Registration Statement shall have become effective or any supplement to the Prospectus shall have been filed, (B) of any request by the Commission for any amendment of the Registration Statement or the Prospectus or for any additional information, (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any preliminary prospectus or any "free writing prospectus", as defined in Rule 405 of the Rules, or the institution or threatening of any proceeding for that purpose and (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Company shall not file any amendment of the Registration Statement or supplement to the Prospectus or any document incorporated by reference in the Registration Statement or any Issuer Free Writing Prospectus unless the Company has furnished the Representatives a copy for their review prior to filing and shall not file any such proposed amendment or supplement to which the Representatives reasonably object. The Company shall use its best efforts to prevent the issuance of any such stop order and, if issued, to obtain as soon as possible the withdrawal thereof.

(iii) If, at any time when a prospectus relating to the Shares (or, in lieu thereof, the notice referred to in Rule 173(a) of the Rules) is required to be delivered under the Securities Act, any event occurs as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend or supplement the Prospectus to comply with the Securities Act or the Rules, the Company promptly shall prepare and file with the Commission, subject to the second sentence of paragraph (ii) of this Section 4(a), an amendment or supplement which shall correct such statement or omission or an amendment which shall effect such compliance.

(iv) If at any time following issuance of an Issuer Free Writing Prospectus there occurs an event or development as a result of which such Issuer Free Writing Prospectus would conflict with the information contained in the Registration Statement or would include an untrue statement of a material fact or would omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances prevailing at the subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(v) [Reserved].

(vi) The Company shall furnish to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement (including all exhibits thereto and amendments thereof) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and all amendments thereof and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act or the Rules, as many copies of any Preliminary Prospectus, any Issuer Free Writing Prospectus and the Prospectus and any amendments thereof and supplements thereto as the Representatives may reasonably request. If applicable, the copies of the Registration Statement, Preliminary Prospectus, any Issuer Free Writing Prospectus and Prospectus and each amendment and supplement thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(vii) The Company shall cooperate with the Representatives and their counsel in endeavoring to qualify the Shares for offer and sale in connection with the offering under the laws of such jurisdictions as the Representatives may designate and shall maintain such qualifications in effect so long as required for the distribution of the Shares; provided, however, that the Company shall not be required in connection therewith, as a condition thereof, to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction or subject itself to taxation as doing business in any jurisdiction.

(viii) The Company, during the period when the Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) of the Rules) is required to be delivered under the Securities Act and the Rules or the Exchange Act, will file all reports and other documents required to be filed with the Commission pursuant to Section 13, 14 or 15 of the Exchange Act within the time periods required by the Exchange Act and the regulations promulgated thereunder.

(ix) Without the prior written consent of the Representatives, except for the resale registration rights granted with respect to the Common Stock underlying certain warrants registered for resale under the Company's existing Registration Statement on Form S-3 (No. 333-212017), for a period of 90 days after the date of this Agreement, the Company shall not issue, sell or register with the Commission (other than on Form S-8 or on any successor form), or otherwise dispose of, directly or indirectly, any equity securities of the Company (or any securities convertible into, exercisable for or exchangeable for equity securities of the Company), except for the issuance of shares of Common Stock upon exercise of warrants outstanding on the date hereof, the issuance of Shares pursuant to the Registration Statement, the CSMC Issuance and the issuance of shares pursuant to the Company's existing stock option plan or bonus plan as described in the Registration Statement and the Prospectus.

(x) On or before completion of this offering, the Company shall make all filings required under applicable securities laws and by the NASDAQ Capital Market (including any required registration under the Exchange Act).

(xi) Prior to the Closing Date, the Company will issue no press release or other communications directly or indirectly and hold no press conference with respect to the Company, the condition, financial or otherwise, or the earnings, business affairs or business prospects of any of them, or the offering of the Shares without the prior written consent of the Representatives unless in the judgment of the Company and its counsel, and after notification to the Representatives, such press release or communication is required by law.

(xii) The Company will apply the net proceeds from the offering of the Shares in the manner set forth under "Use of Proceeds" in the Statutory Prospectus.

(b) The Company agrees to pay, or reimburse if paid by the Representatives, all reasonable and documented costs and expenses incident to the public offering of the Shares and the performance of the obligations of the Company under this Agreement including those relating to: (i) the preparation, printing, reproduction filing and distribution of the Registration Statement including all exhibits thereto, each Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, all amendments and supplements thereto and any document incorporated by reference therein, and the printing, filing and distribution of this Agreement; (ii) the preparation and delivery of certificates for the Shares to the Underwriters; (iii) the registration or qualification of the Shares for offer and sale under the securities or Blue Sky laws of the various jurisdictions referred to in Section 4(a)(vii), including the reasonable and documented fees and disbursements of counsel for the Underwriters in connection with such registration and qualification and the preparation, printing, distribution and shipment of preliminary and supplementary Blue Sky memoranda; (iv) the furnishing (including costs of shipping and mailing) to the Representatives and to the Underwriters of copies of each Preliminary Prospectus, the Prospectus and all amendments or supplements to the Prospectus, any Issuer Free Writing Prospectus, and of the several documents required by this Section to be so furnished, as may be reasonably requested for use in connection with the offering and sale of the Shares by the Underwriters or by dealers to whom Shares may be sold; (v) the filing fees of FINRA in connection with its review of the terms of the public offering; (vi) inclusion of the Shares for listing on the NASDAQ Capital Market; (vii) all transfer taxes, if any, with respect to the sale and delivery of the Shares by the Company to the Underwriters; (viii) the fees, disbursements and other charges of counsel to the Underwriters; provided, however, that all fees, disbursements and other charges of counsel to the Underwriters to be reimbursed by the Company pursuant to this Section 4 shall not exceed \$100,000 in the aggregate; and (ix) all other costs and expenses of the Underwriters whether or not set forth in this Section 4(b) in an amount not to exceed \$15,000. The Company shall be entitled to offset any amounts paid to counsel to the Underwriters which the Company is previously obligated to pay pursuant to any other engagement letters with any other person.

(c) The Company acknowledges and agrees that each of the Underwriters has acted and is acting solely in the capacity of a principal in an arm's length transaction between the Company, on the one hand, and the Underwriters, on the other hand, with respect to the offering of Shares contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor, agent or fiduciary to the Company or any other person. Additionally, the Company acknowledges and agrees that the Underwriters have not and will not advise the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company has consulted with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company or any other person with respect thereto, whether arising prior to or after the date hereof. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions have been and will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company. The Company agrees that it will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary duty to the company or any other person in connection with any such transaction or the process leading thereto.

(d) If requested by the Representatives, the Company will prepare a final term sheet relating to the Shares, containing only information that describes the final terms of the Shares and otherwise in a form consented to by the Representatives, and will file such final term sheet within the period required by Rule 433(d)(5)(ii) following the date such final terms have been established for all classes of the offering of the Shares. Any such final term sheet shall be an Issuer Free Writing Prospectus for purposes of this Agreement.

(e) The Company represents and agrees that, unless it obtains the prior consent of the Representatives, and each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute an "issuer free writing prospectus," as defined in Rule 433, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. The Company has complied and will comply with the requirements of Rule 433 under the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. The Company represents that it has satisfied and agrees that it will satisfy the conditions set forth in Rule 433 of the Rules to avoid a requirement to file with the Commission any Road Show.

#### 5. Indemnification.

(a) The Company agrees to indemnify and hold harmless ROTH Capital Partners, LLC ("ROTH") and its affiliates (as defined in Rule 405 under the Securities Act) and their respective directors, officers, employees, agents and controlling persons (ROTH and each such person each being an "Indemnified Party") from and against from and against all losses, claims, damages and liabilities (or actions, including shareholder actions, in respect thereof), joint or several, to which such Indemnified Party may become subject under any applicable federal or state law, or otherwise, which are related to or result from any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement, the Statutory Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Shares ("Marketing Materials"), or any "issuer-information" filed or required to be filed pursuant to Rule 433(d) of the Rules, any amendment thereof or supplement thereto, or are related to or result from any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that such indemnity shall not inure to the benefit of ROTH (or any person controlling ROTH) on account of any losses, claims, damages or liabilities arising from the sale of the Shares to any person by ROTH if such untrue statement or omission or alleged untrue statement or omission was made in such Preliminary Prospectus, the Registration Statement, the Statutory Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Marketing Materials, or any "issuer-information" filed or required to be filed pursuant to Rule 433(d) of the Rules, any amendment thereof or supplement thereto, in reliance upon and in conformity with the Underwriting Information. The Company will not be liable to any Indemnified Party under the foregoing indemnification and reimbursement provisions (i) for any settlement by an Indemnified Party effected without the Company's prior written consent; or (ii) to the extent that any loss, claim, damage or liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from an Indemnified Party's willful misconduct, bad faith or gross negligence.

(b) Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each director of the Company, and each officer of the Company who signs the Registration Statement, against any losses, claims, damages or liabilities to which such party may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement, the Statutory Prospectus or the Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any Preliminary Prospectus, the Registration Statement, the Statutory Prospectus or the Prospectus or any such amendment or supplement in reliance upon and in conformity with the Underwriting Information; provided, however, that the obligation of each Underwriter to indemnify the Company (including any controlling person, director or officer thereof) shall be limited to the amount of the underwriting discount and commissions applicable to the Shares to be purchased by such Underwriter hereunder.

(c) Promptly after receipt by an Indemnified Party of notice of any intention or threat to commence an action, suit or proceeding or notice of the commencement of any action, suit or proceeding, such Indemnified Party will, if a claim in respect thereof is to be made against the party providing the indemnity hereunder (the "Indemnifying Party"), promptly notify the Indemnifying Party in writing of the same. Any failure or delay by an Indemnified Party to give the notice referred to in this paragraph shall not affect such Indemnified Party's right to be indemnified hereunder, except to the extent that such failure or delay causes actual material harm to the Indemnifying Party, or materially prejudices its ability to defend such action, suit or proceeding on behalf of such Indemnified Party. In case any such action is brought against any Indemnified Party and such Indemnified Party notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party may elect to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, and an Indemnified Party may employ counsel to participate in the defense of any such action provided, that the employment of such counsel shall be at the Indemnified Party's own expense, unless (i) the employment of such counsel has been authorized in writing by the Indemnifying Party, (ii) the Indemnified Party has reasonably concluded (based upon advice of counsel to the Indemnified Party) that there are legal defenses available to the Indemnified Party that are not available to the Indemnifying Party, or that there exists a conflict or potential conflict of interest (based upon advice of counsel to the Indemnified Party) between the Indemnified Party and the Indemnifying Party that makes it impossible or inadvisable for counsel to the Indemnifying Party to conduct the defense of both parties (in which case the Indemnifying Party will not have the right to direct the defense of such action on behalf of the Indemnified Party), or (iii) the Indemnifying Party has not in fact employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action within a reasonable time after receiving notice of the action, suit or proceeding, in each of which cases the reasonable fees, disbursements and other charges of such counsel will be at the expense of the Indemnifying Party; provided, further, that in no event shall the Indemnifying Party be required to pay fees and expenses for more than one firm of attorneys (and local counsel) representing Indemnified Parties. To the extent the Indemnifying Party assumes any such defense consistent with the terms hereof, the Indemnifying Party will not be liable for any legal or other expenses subsequently incurred directly by an Indemnified Party unless otherwise specifically set forth herein.

(d) So long as the Indemnifying Party is conducting the defense of the action in accordance herewith, the Indemnifying Party agrees not to enter into any waiver, release or settlement of any claim in respect of which indemnification may be sought hereunder without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld or delayed), unless such waiver, release or settlement (i) includes an unconditional release of each Indemnified Party from all liability arising out of such claim, (ii) does not contain any factual or legal admission by or with respect to any Indemnified Party or any adverse statement with respect to any Indemnified Party and (iii) does not purport to limit the future activities of any Indemnified Party. No Indemnified Party will agree to enter into any waiver, release or settlement of any claim and seek indemnification or reimbursement hereunder unless such Indemnified Party obtained the Indemnifying Party's consent to such settlement. Notwithstanding any other provision contained herein, if the Indemnified Party withholds its consent to a bona fide settlement offer, where but for such action the Indemnified Party could have settled such claim, the Indemnifying Party will be required to indemnify the Indemnified Party only up to a maximum of the bona fide settlement offer for which the Indemnifying Party could have settled such claim.

(e) If multiple claims are brought with respect to at least one of which indemnification is permitted under applicable law and provided for under this Agreement, the Indemnifying Party agrees that any judgment or arbitration award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for, except to the extent the judgment or arbitration award expressly states that it, or any portion thereof, is based solely on a claim as to which indemnification is not available.

6. Contribution. If the indemnification provided for in Section 5(a) or 5(b) is for any reason held unenforceable as to an Indemnified Party, the Indemnifying Party agrees to contribute to the losses, claims, damages and liabilities for which such indemnification is held unenforceable (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and the Underwriters on the other hand, of the offering of the Shares pursuant to this Agreement or (ii) if (but only if) the allocation provided for in clause (i) is for any reason unenforceable, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand and the Underwriters, on the other hand, as well as any other relevant equitable considerations. The Company agrees that for the purposes of this paragraph the relative benefits to the Company and the Underwriters of the Offering as contemplated shall be deemed to be in the same proportion that the total value received or contemplated to be received by the Company in connection with the offerings of the Shares bear to the fees paid or to be paid to the Underwriters under this Agreement. Notwithstanding the foregoing, the Company expressly agrees that the Underwriters shall not be required to contribute any amount in excess of the amount by which fees paid to the Underwriters hereunder (excluding reimbursable expenses), exceeds the amount of any damages which the Underwriters have otherwise been required to pay. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 6 are several in proportion to their respective underwriting commitments and not joint.

7. Termination.

(a) This Agreement may be terminated with respect to the Shares to be purchased on a Closing Date by the Representatives by notifying the Company at any time subsequent to the execution of this Agreement and at or before a Closing Date in the absolute discretion of the Representatives if: (i) there has occurred any material adverse change in the securities markets or any event, act or occurrence that has materially disrupted the securities markets or there shall be such a material adverse change in general financial, political or economic conditions or the effect of international conditions on the financial markets in the United States is such as to make it, in the judgment of the Representatives, inadvisable or impracticable to market the Shares or enforce contracts for the sale of the Shares; (ii) there has occurred any outbreak or material escalation of hostilities or acts of terrorism or other calamity or crisis the effect of which on the financial markets of the United States is such as to make it, in the judgment of the Representatives, inadvisable or impracticable to market the Shares or enforce contracts for the sale of the Shares; (iii) trading in the Shares or any securities of the Company has been suspended or materially limited by the Commission or trading generally on the NASDAQ Capital Market has been suspended or materially limited, or minimum or maximum ranges for prices for securities shall have been fixed, or maximum ranges for prices for securities have been required, by any of said exchanges or by such system or by order of the Commission, FINRA, or any other governmental or regulatory authority; (iv) a banking moratorium has been declared by any state or Federal authority; or (v) in the judgment of the Representatives, there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Prospectus, any material adverse change in the assets, properties, condition, financial or otherwise, or in the results of operations, business affairs or business prospects of the Company and the Subsidiary considered as a whole, whether or not arising in the ordinary course of business.

(b) If this Agreement is terminated pursuant to any of its provisions, the Company shall not be under any liability to any Underwriter, and no Underwriter shall be under any liability to the Company, except that (y) if this Agreement is terminated by the Representatives or the Underwriters because of any failure, refusal or inability on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, the Company will reimburse the Underwriters for all reasonable and documented out-of-pocket expenses (including the reasonable and documented fees and disbursements of their counsel) (provided that the amount of such expenses shall be reduced by fifty percent (50%)) incurred by them in connection with the proposed purchase and sale of the Shares or in contemplation of performing their obligations hereunder, provided that it is understood that the Company shall not pay or reimburse any costs, fees or expenses incurred by an Underwriter that defaults on its obligation to purchase the Shares, and (z) no Underwriter who shall have failed or refused to purchase the Shares agreed to be purchased by it under this Agreement, without some reason sufficient hereunder to justify cancellation or termination of its obligations under this Agreement, shall be relieved of liability to the Company or to the other Underwriters for damages occasioned by its failure or refusal.

8. Substitution of Underwriters. If any Underwriter shall default in its obligation to purchase on any Closing Date the Shares agreed to be purchased hereunder on such Closing Date, the Representatives shall have the right, within 36 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase such Shares on the terms contained herein. If, however, the Representatives shall not have completed such arrangements within such 36-hour period, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties reasonably satisfactory to the Underwriters to purchase such Shares on such terms. If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided above, the aggregate number of Shares which remains unpurchased on such Closing Date does not exceed 10% of the aggregate number of all the Shares that all the Underwriters are obligated to purchase on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Shares which such Underwriter agreed to purchase hereunder at such date and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default. In any such case, either the Representatives or the Company shall have the right to postpone the applicable Closing Date for a period of not more than seven days in order to effect any necessary changes and arrangements (including any necessary amendments or supplements to the Registration Statement or Prospectus or any other documents), and the Company agrees to file promptly any amendments to the Registration Statement or the Prospectus which in the opinion of the Company and the Underwriters and their counsel may thereby be made necessary.



If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided above, the aggregate number of such Shares which remains unpurchased exceeds 10% of the aggregate number of all the Shares to be purchased at such date, then this Agreement, or, with respect to a Closing Date which occurs after the Firm Shares Closing Date, the obligations of the Underwriters to purchase, and of the Company to sell, the Option Shares to be purchased and sold on such date, shall terminate, without liability on the part of any non-defaulting Underwriter to the Company, and without liability on the part of the Company, except as provided in Sections 4(b), 5, 6 and 7. The provisions of this Section 8 shall not in any way affect the liability of any defaulting Underwriter to the Company or the nondefaulting Underwriters arising out of such default. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section 8 with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

9 . Miscellaneous. The respective agreements, representations, warranties, indemnities and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or the Company or any of their respective officers, directors or controlling persons referred to in Sections 5 and 6 hereof, and shall survive delivery of and payment for the Shares. In addition, the provisions of Sections 4(b), 5, 6 and 7 shall survive the termination or cancellation of this Agreement.

This Agreement has been and is made for the benefit of the Underwriters, the Company and their respective successors and assigns, and, to the extent expressed herein, for the benefit of persons controlling any of the Underwriters, or the Company, and the directors and officers of the Company, and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include any purchaser of Shares from any Underwriter merely because of such purchase.

All notices and communications hereunder shall be in writing and mailed or delivered or by telephone or telegraph if subsequently confirmed in writing, (a) if to the Representatives, to (i) Roth Capital Partners, LLC, 888 San Clemente Drive, Newport Beach, California 92660, Attention: Equity Capital Markets; and (ii) National Securities Corporation, 410 Park Avenue, 14th Floor, New York, NY 10022, Attention: Jonathan Rich, with a copy (which shall not constitute notice) to Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018, Attention: Thomas S. Levato, Esq. and (b) if to the Company, to Capricor Therapeutics, Inc., 8840 Wilshire Boulevard, 2<sup>nd</sup> Floor, Beverly Hills, California, 90211, Attention: Chief Executive Officer, with a copy (which shall not constitute notice) to Paul Hastings LLP, 1117 S. California Avenue, Palo Alto, California, 94304, Attention: Rob Carlson, Esq.

**This Agreement shall be governed by and construed in accordance with the laws of the State of New York.**

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Execution and delivery of a signed counterpart of this Agreement by facsimile or electronic mail/pdf transmission shall constitute valid and sufficient execution and delivery thereof.

Please confirm that the foregoing correctly sets forth the agreement among us.

Very truly yours,

CAPRICOR THERAPEUTICS, INC.

By: /s/ Linda Marbán, Ph.D.

Name: Linda Marbán, Ph.D.

Title: President and Chief Executive Officer

Confirmed:

ROTH CAPITAL PARTNERS, LLC

By: /s/ Aaron M. Gurewitz

Name: Aaron M. Gurewitz

Title: Head of Equity Capital Markets

NATIONAL SECURITIES CORPORATION

By: /s/ Jonathan C. Rich

Name: Jonathan C. Rich

Title: EVP

Acting severally on behalf of themselves and as Representatives of the  
Several Underwriters named in Schedule I hereto.

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SCHEDULE I

Underwriters

<u>Name</u>	Number of Firm Shares <u>to be Purchased</u>
Roth Capital Partners, LLC	1,343,750
National Securities Corporation	1,343,750
<b>Total:</b>	2,687,500

SCHEDULE II

Pricing Information

Purchase Price Per Share:	\$3.20
Number of Firm Shares Offered:	2,687,500
Underwriting Discount:	6.845%
Firm Shares Closing Date:	September 21, 2016
Concurrent Registered Direct Offering Gross Proceeds:	\$1,000,000

SCHEDULE III

Issuer Free Writing Prospectus

None.

SCHEDULE IV

List of Directors, Executive Officers and Shareholders Executing Lock-Up Agreements

Linda Marbán, Ph.D.  
Eduardo Marbán, M.D., Ph.D.  
Leland Gershell, M.D., Ph.D.  
Anthony Bergmann, M.B.A.  
Karen G. Krasney, J.D.  
Deborah Ascheim, M.D.  
Rachel Smith, Ph.D.  
Frank Litvack, M.D.  
Joshua Kazam  
Earl M. (Duke) Collier, Jr.  
David B. Musket  
Louis Manzo  
George W. Dunbar, Jr.

## FORM OF LOCK-UP AGREEMENT

[ ], 2016

Roth Capital Partners, LLC  
888 San Clemente Drive  
Newport Beach, California 92660

National Securities Corporation  
410 Park Avenue, 14<sup>th</sup> Floor  
New York, NY 10022

As Representatives of the Several Underwriters

Re: Public Offering of Capricor Therapeutics, Inc.

Ladies and Gentlemen:

The undersigned understands that you, as the underwriters (the "Underwriters"), propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with Capricor Therapeutics, Inc., a Delaware corporation (the "Company"), providing for the public offering (the "Public Offering") by you of shares (the "Shares") of the Company's common stock, par value \$0.001 per share ("Common Stock"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Underwriting Agreement.

In consideration of your agreement to enter into the Underwriting Agreement and to proceed with the Public Offering of the Shares, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agrees for the benefit of the Company and you that, without each of your prior written consent, the undersigned will not, during the period commencing on the date hereof and ending 90 days after the date of the final prospectus supplement (the "Lock-Up Period") relating to the Public Offering (the "Prospectus Supplement"), directly or indirectly (1) offer, pledge, assign, encumber, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock owned either of record or beneficially (as defined in the Securities Exchange Act of 1934, as amended) by the undersigned on the date hereof or hereafter acquired or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, or publicly announce an intention to do any of the foregoing. In addition, the undersigned agrees that, without each of your prior written consent, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; provided, that the foregoing shall not prohibit the exercise by the undersigned of its resale registration rights with respect to Common Stock underlying certain warrants held by the undersigned and registered for resale under the Company's existing Registration Statement No. 333-212017. The foregoing shall not apply to (a) Common Stock to be transferred as a gift or gifts (provided that any donee thereof agrees in writing to be bound by the terms hereof), (b) Common Stock transferred, either during the undersigned's lifetime or on death, by will or intestate succession to the immediate family of the undersigned or to a trust the beneficiaries of which are exclusively the undersigned or any member or members of his immediate family (provided that any transferee thereof agrees in writing to be bound by the terms hereof), (c) the acquisition of Common Stock upon (i) exercise of any stock option issued pursuant to the Company's existing stock incentive plans, including any exercise effected by delivery of Common Stock, or (ii) delivery of shares of Common Stock pursuant to the terms of restricted stock units issued under the Company's existing stock incentive plans, (d) the sale of the Shares to be sold pursuant to the Prospectus Supplement, and (e) to the Company pursuant to any contractual arrangement that provides for the repurchase of the undersigned's Common Stock or such other securities by the Company or in connection with the termination of the undersigned's employment or other service relationship with the Company.

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In furtherance of the foregoing, the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this letter agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this letter agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that, if the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Shares to be sold thereunder, the undersigned shall be released from all obligations under this letter agreement.

The undersigned, whether or not participating in the Public Offering, understands that you, as the Underwriters, are entering into the Underwriting Agreement and proceeding with the Public Offering in reliance upon this letter agreement.

Notwithstanding the foregoing, the undersigned shall be released from all obligations under this letter agreement if the Public Offering has not been commenced by October 31, 2016 or has otherwise been terminated by the Company and you.

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This letter agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

Very truly yours,

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

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

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## SUBSCRIPTION AGREEMENT

This Subscription Agreement (this "**Subscription**") is dated as of September 16, 2016, by and between **Capricor Therapeutics, Inc.**, a Delaware corporation (the "**Company**"), and **Cedars-Sinai Medical Center** (the "**Investor**").

## RECITALS

**A.** The Investor wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Subscription, 312,500 shares (the "**Shares**") of Common Stock, par value \$0.001 per share, of the Company (the "**Common Stock**").

**B.** Subject to the terms and conditions set forth in this Subscription and pursuant to the Company's effective Registration Statement on Form S-3 (File No. 333-207149), as filed with the Securities and Exchange Commission on September 28, 2015 (as amended and/or supplemented from time to time, the "**Registration Statement**") as to the Shares, the Company desires to issue and sell to the Investor, and the Investor desires to purchase from the Company, the Shares as more fully described in this Subscription.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants contained in this Subscription, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

1. Subscription.

(a) The Investor agrees to buy, and the Company agrees to sell and issue to the Investor, 312,500 Shares for an aggregate purchase price of \$1,000,000 (the "**Subscription Amount**").

(b) The Shares have been registered on the Registration Statement. The Registration Statement has been declared effective by the Securities and Exchange Commission (the "**SEC**") and is effective on the date hereof. A final prospectus supplement will be delivered to the Investor as required by law.

(c) The completion of the purchase and sale of the Shares (the "**Closing**") shall take place at the offices of Paul Hastings LLP, located at 1117 S. California Avenue, Palo Alto, California 94304, or at such other location(s) or remotely by facsimile transmission or other electronic means as the parties may mutually agree, on the date specified by the Company. At the Closing, (i) the Investor shall pay the Subscription Amount by wire transfer of immediately available funds to the Company to such bank account or accounts as shall be designated by the Company and (ii) the Company shall cause the Shares to be delivered to the Investor, with the delivery of the Shares to be made either through the facilities of The Depository Trust Company's DWAC system in accordance with the instructions set forth on the Investor's signature page attached hereto under the heading "DWAC Instructions" or through book entry confirmation from the Company's transfer agent.

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2. Representations and Warranties of the Company. The Company represents and warrants as of the date hereof to the Investor as follows: (i) it has the full corporate power and authority to enter into this Subscription and to perform all of its obligations hereunder; (ii) this Subscription has been duly authorized and executed by, and when delivered in accordance with the terms hereof will constitute a valid and binding agreement of, the Company enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights and remedies of creditors generally or subject to general principles of equity; (iii) the execution and delivery of this Subscription and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of the Company's Certificate of Incorporation or Bylaws and amendments thereto through the date hereof; (iv) the Shares, when issued and paid for in accordance with the terms of this Subscription, will be duly authorized, validly issued, fully paid and non-assessable; and (v) the Registration Statement, at the time it became effective, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

3. Representations, Warranties and Acknowledgments of the Investor.

(a) The Investor hereby represents and warrants as of the date hereof to the Company as follows: (i) it has the full right, power and authority to enter into this Subscription and to perform all of its obligations hereunder; (ii) this Subscription has been duly authorized and executed by the Investor and, when delivered in accordance with the terms hereof, will constitute a valid and binding agreement of the Investor enforceable against the Investor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights and remedies of creditors generally or subject to general principles of equity; (iii) the execution and delivery of this Subscription and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of the Investor's governing or organizational documents; (iv) the Investor has had full access to the prospectus included in the Registration Statement and the Company's periodic reports and other information incorporated by reference therein, and was able to read, review, download and print such materials, if desired; (v) in making its investment decision with respect to the Shares, the Investor and its Advisors (as defined below), if any, have relied solely on the Company's public filings with the SEC; (vi) at the time the Investor was offered the Shares, it was, and at the date hereof it is, and on the date of the Closing it will be, an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended; (vii) the Investor is knowledgeable, sophisticated and experienced in making, and is qualified to make, decisions with respect to investments in securities representing an investment decision like that involved in the purchase of the Shares; (viii) the Investor and the Investor's attorneys, accountants, purchaser representatives and/or tax advisors, if any (collectively, "*Advisors*"), have received and carefully reviewed this Subscription, the Company's SEC filings and each of the transaction documents and all other documents requested by the Investor or its Advisors, if any, and understand the information contained therein, prior to the execution of this Subscription; (ix) the Investor and its Advisors, if any, have had a reasonable opportunity to ask questions of and receive answers from the Company's officers and any other persons authorized by the Company to answer such questions, concerning, among other related matters, the Shares, the transaction documents and the business, financial condition, results of operations and prospects of the Company and all such questions have been answered by the Company to the full satisfaction of the Investor and its Advisors, if any; (x) the Investor has taken no action which would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Subscription or the transactions contemplated hereby; (xi) the Investor is not relying on the Company or any of its respective employees or agents with respect to the legal, tax, economic and related considerations of an investment in the Shares, and the Investor has relied on the advice of, or has consulted with, only its own Advisors; (xii) the Investor is satisfied that it has received adequate information with respect to all matters which it or its Advisors, if any, consider material to its decision to make an investment in the Shares; (xiii) except as set forth below, the Investor is not a, and it has no direct or indirect affiliation or association with any, member of the Financial Industry Regulatory Authority, Inc. or an Associated Person (as such term is defined under the NASD Membership and Registration Rules Section 1011) as of the date hereof; and (xiv) neither the Investor nor any group of investors (as identified in a public filing made with the SEC) of which the Investor is a part in connection with the offering of the Shares, acquired, or obtained the right to acquire, twenty percent (20%) or more of the Common Stock (or securities convertible into or exercisable for Common Stock) or the voting power of the Company on a post-transaction basis.

(b) The Investor hereby also represents and warrants as of the date hereof to the Company that, other than the transactions contemplated hereunder, the Investor has not, directly or indirectly, nor has any person acting on behalf of or pursuant to any understanding with the Investor, executed any transactions in securities of the Company, including “short sales” as defined in Rule 200 of Regulation SHO under the Securities Exchange Act of 1934, as amended (“*Short Sales*”), during the period commencing from the time that the Investor first became aware of the proposed transactions contemplated hereunder until the date hereof (the “*Discussion Time*”). The Investor has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

4. Covenant of the Investor Regarding Short Sales and Confidentiality. The Investor hereby covenants that neither it nor any affiliates acting on its behalf or pursuant to any understanding with it will execute any transactions in securities of the Company, including Short Sales, during the period after the Discussion Time and ending at the time that the transactions contemplated by this Subscription are first publicly announced by the Company through a press release and/or Current Report on Form 8-K. The Investor hereby covenants that until such time as the transactions contemplated by this Subscription are publicly disclosed by the Company through a press release and/or Current Report on Form 8-K, the Investor will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

5. Miscellaneous.

(a) This Subscription constitutes the entire understanding and agreement among the parties with respect to its subject matter, and there are no agreements or understandings with respect to the subject matter hereof which are not contained in this Subscription.

(b) This Subscription may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each party and delivered to the other party hereto, it being understood that the parties need not sign the same counterpart. Execution may be made by delivery by facsimile or by e-mail delivery of a “.pdf” format data file.

(c) The provisions of this Subscription are severable and, in the event that any court or officials of any regulatory agency of competent jurisdiction shall determine that any one or more of the provisions or part of the provisions contained in this Subscription shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Subscription and this Subscription shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of such provision, had never been contained herein, so that such provisions would be valid, legal and enforceable to the maximum extent possible, so long as such construction does not materially adversely affect the economic rights of either party hereto.

(d) All communications hereunder, except as may be otherwise specifically provided herein, shall be in writing and shall be mailed, hand delivered, sent by a recognized overnight courier or sent via facsimile or by e-mail delivery and confirmed by letter, to the party to whom it is addressed at the following addresses or such other address as such party may advise the other in writing:

To the Company: as set forth on the signature page hereto.

To the Investor: as set forth on the Investor's signature page hereto.

All notices hereunder shall be effective upon receipt by the party to which it is addressed.

(e) No provision of this Subscription may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Investor or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Subscription shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

(f) This Subscription shall be governed by and interpreted in accordance with the laws of the State of California for contracts to be wholly performed in such state and without giving effect to the principles thereof regarding the conflict of laws.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Subscription Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**CAPRICOR THERAPEUTICS, INC.**

By: /s/ Linda Marbán, Ph.D.

Name: Linda Marbán, Ph.D.

Title: Chief Executive Officer

Address for Notices:

c/o Capricor Therapeutics, Inc.  
8840 Wilshire Blvd., 2nd Floor  
Beverly Hills, California 90211  
Attention: Karen Krasney, Esq.  
Email Address: kkrasney@capricor.com

*[Signature Page to Subscription Agreement]*

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**IN WITNESS WHEREOF**, the parties hereto have caused this Subscription Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**CEDARS-SINAI MEDICAL CENTER**

Signature: /s/ David M. Wrigley  
By: \_\_\_\_\_  
Name: David M. Wrigley  
Title: VP Finance

Address for Notices:  
6500 Wilshire Blvd - 24th Fl  
Los Angeles, CA 90048  
Attention: David M. Wrigley  
Email Address: \_\_\_\_\_

*[Signature Page to Subscription Agreement]*

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September 16, 2016

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Capricor Therapeutics, Inc.  
8840 Wilshire Blvd., 2nd Floor  
Beverly Hills, CA 90211

Ladies and Gentlemen:

We have acted as counsel to Capricor Therapeutics, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b) of the rules and regulations of the Securities Act of 1933, as amended (the "Act"), of two prospectus supplements, dated September 16, 2016 (the "Prospectus Supplements"), to the Company's Registration Statement on Form S-3 (File No. 333-207149) originally filed with the Commission under the Act on September 28, 2015 (the "Registration Statement"), and the related prospectus, dated September 25, 2015, included in the Registration Statement at the time it originally became effective (the "Base Prospectus" and, together with the Prospectus Supplements, the "Prospectus"), relating to the offering by the Company of up to 3,000,000 shares (the "Shares") of the Company's common stock, par value \$0.001 per share ("Common Stock"), and up to an additional 403,125 Shares subject to an over-allotment option granted to the underwriters of the offering. Certain of the Shares are being sold to the several underwriters named in, and pursuant to, an underwriting agreement by and among the Company, Roth Capital Partners, LLC and National Securities Corporation, as the representatives of such underwriters, dated as of September 16, 2016 (the "Underwriting Agreement"). Certain of the Shares are being sold to Cedars-Sinai Medical Center ("CSMC"), one of the Company's stockholders, pursuant to a subscription agreement between the Company and CSMC, dated as of September 16, 2016 (the "Subscription Agreement"), directly and not through the underwriters.

This opinion letter updates and supplements our opinion letter dated September 25, 2015, filed as an exhibit to the Registration Statement. All assumptions, limitations, qualifications and exceptions set forth in our opinion letter dated September 25, 2015, filed as an exhibit to the Registration Statement, are incorporated by reference into this opinion letter.

In connection with this opinion, we have examined and relied upon the Registration Statement, the Prospectus, the Underwriting Agreement, the Subscription Agreement, the Company's Certificate of Incorporation, as amended, as certified as of September 15, 2016 by the Secretary of State of the State of Delaware and the Bylaws of the Company, as certified by the Chief Executive Officer of the Company as of the date hereof, each as currently in effect, and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. As to certain factual matters, we have relied upon certificates of officers of the Company and have not independently verified such matters.

We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the genuineness of all signatures. We have also assumed the legal capacity and competency of all natural persons and that, with respect to all parties to agreements or instruments relevant hereto other than the Company, such parties had the requisite power and authority to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action, executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties.

Paul Hastings LLP | 1117 S. California Avenue | Palo Alto, California 94304  
t: +1.650.320.1800 | www.paulhastings.com

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Our knowledge of the Company and its legal and other affairs is limited by the scope of our engagement, which scope includes the delivery of this opinion letter. We do not represent the Company with respect to all legal matters or issues. The Company may employ other independent counsel and, to our knowledge, handles certain legal matters and issues without the assistance of independent counsel.

Our opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. Our opinion herein is expressed solely with respect to the federal laws of the United States and the General Corporation Law of the State of Delaware. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof. Our opinion is based on these laws as in effect on the date hereof, and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. We express no opinion as to whether the laws of any particular jurisdiction other than those identified above are applicable to the subject matter hereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold against payment therefor in accordance with the Underwriting Agreement or the Subscription Agreement, as applicable, will be validly issued, fully paid and nonassessable.

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus included in the Registration Statement and to the filing of this opinion as an exhibit to a Current Report of the Company on Form 8-K.

Very truly yours,

/s/ Paul Hastings LLP

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### **Capricor Therapeutics Announces Pricing of Offerings of Common Stock**

LOS ANGELES, September 16, 2016 – Capricor Therapeutics, Inc. (NASDAQ: CAPR) today announced the pricing of its offerings of 3,000,000 shares of its common stock at an offering price of \$3.20 per share, before underwriting discounts. 2,687,500 shares of Capricor’s common stock will be purchased by the underwriters in an underwritten registered public offering and 312,500 shares will be purchased by Cedars-Sinai Medical Center, a stockholder of Capricor, from Capricor directly and not through the underwriters in a concurrent registered direct offering. Capricor has granted the underwriters a 30-day option to purchase up to an additional 403,125 shares of its common stock. The proceeds to Capricor from the offerings are expected to be approximately \$8.7 million after deducting underwriting discounts and commissions and other estimated offering expenses but excluding any exercise of the underwriters’ option. All shares of common stock to be sold in the offerings are being offered by Capricor. The offerings are expected to close on or about September 21, 2016, subject to customary closing conditions.

Roth Capital Partners and National Securities Corporation, a wholly-owned subsidiary of National Holdings, Inc. (NASDAQ: NHLD), are acting as joint book-running managers for the registered public offering.

The securities described above are being offered by Capricor pursuant to a shelf registration statement on Form S-3 (File No. 333-207149) previously filed with the Securities and Exchange Commission (the “SEC”) on September 28, 2015 and declared effective by the SEC on October 26, 2015. The securities may be offered only by means of a prospectus. A preliminary prospectus supplement related to the underwritten registered public offering was filed with the SEC on September 15, 2016 and is available on the SEC’s website at [www.sec.gov](http://www.sec.gov), and a final prospectus supplement related to each of the offerings will be filed with the SEC and will be available on the SEC’s website. When available, copies of the final prospectus supplement and the accompanying prospectus for the securities being offered in the underwritten registered public offering may also be obtained from Roth Capital Partners, LLC, 888 San Clemente, Newport Beach, CA 92660, (800) 678-9147, and National Securities Corporation, 410 Park Avenue, 14<sup>th</sup> Floor, New York, NY 10022, (212) 417-8164.

This press release does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

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## About Capricor Therapeutics

Capricor Therapeutics, Inc. (NASDAQ: CAPR) is a clinical-stage biotechnology company focused on the discovery, development and commercialization of biological therapies for the treatment of cardiac and other serious medical conditions. Capricor's lead candidate, CAP-1002, is a cardiac cell therapy that is currently being evaluated for the treatment of heart disease associated with Duchenne muscular dystrophy and myocardial infarction (heart attack). Capricor is advancing its proprietary exosome product candidate, CAP-2003, for the treatment of ophthalmic disorders and is exploring other therapeutic areas. Capricor's portfolio also features Cenderitide, a dual natriuretic peptide receptor agonist, which may have application for the outpatient treatment of advanced heart failure and other potential indications.

## Cautionary Note Regarding Forward-Looking Statements

*Statements in this press release regarding the efficacy, safety, and intended utilization of Capricor's product candidates; the initiation, conduct, size, timing and results of discovery efforts and clinical trials; the pace of enrollment of clinical trials; plans regarding regulatory filings, future research and clinical trials; plans regarding current and future collaborative activities and the ownership of commercial rights; scope, duration, validity and enforceability of intellectual property rights; future royalty streams, expectations with respect to the expected use of proceeds from the recently completed offering and the anticipated effects of the offerings, and any other statements about Capricor's management team's future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements that are not statements of historical fact (including statements containing the words "believes," "plans," "could," "anticipates," "expects," "estimates," "should," "target," "will," "would" and similar expressions) should also be considered to be forward-looking statements. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward-looking statements. More information about these and other risks that may impact Capricor's business are set forth in Capricor's Annual Report on Form 10-K for the year ended December 31, 2015, as filed with the Securities and Exchange Commission on March 30, 2016, in its Registration Statement on Form S-3, as filed with the Securities and Exchange Commission on September 28, 2015, and in its Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, as filed with the Securities and Exchange Commission on August 15, 2016. All forward-looking statements in this press release are based on information available to Capricor as of the date hereof, and Capricor assumes no obligation to update these forward-looking statements.*

*CAP-1002 and Cenderitide are Investigational New Drugs and are not approved for any indications. Capricor's exosomes technology has not yet been investigated in any clinical trial.*

For more information, please contact:

### Corporate

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AJ Bergmann, Vice President of Finance  
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[abergmann@capricor.com](mailto:abergmann@capricor.com)

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