SECURITIES & EXCHANGE COMMISSION EDGAR FILING

TENAX THERAPEUTICS, INC.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington D.C., 20549

FORM 10-K

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

For the Fiscal Year Ended April 30, 2012

Commission File No. 001-34600

OXYGEN BIOTHERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**26-2593535**
(State or other jurisdiction of Incorporation or organization)	(I.R.S. Employer Identification No.)

ONE Copley Parkway, Suite 490, Morrisville, NC 27560
(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number and area code: (919) 855-2100

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

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Stock, $0.0001 par value per share	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: NONE

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ❑

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No ❑

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ❑	Accelerated filer ❑	Non-accelerated filer ❑ (Do not check if a smaller reporting company)	Smaller reporting company ☑

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ❑ No☑

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: $41,563,848.

The number of shares outstanding of the registrant's class of $0.0001 par value common stock as of July 20, 2012 was 31,066,462.

DOCUMENTS INCORPORATED BY REFERENCE:

Proxy Statement for the 2012 Annual Meeting of Stockholders is incorporated by reference in Part III to the extent described therein.

FORWARD-LOOKING STATEMENTS

All statements contained in this report, other than statements of historical fact, which address activities, actions, goals, prospects, or new developments, that we expect or anticipate will or may occur in the future, including plans for clinical tests and other such matters pertaining to testing and development products, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may”, “will”, “should”, “expects”, “plans”, “anticipates”, “believes”, “estimates”, “predicts”, “potential” or “continue” or the negative of such terms or other comparable terminology. These statements are only predictions and involve known and unknown risks, uncertainties and other factors, including, but not limited to, progress in our product development and testing activities, obtaining financing for operations, development of new technologies and other competitive pressures, legal and regulatory initiatives affecting our products, conditions in the capital markets, the risks discussed in Item 1A – “Risk Factors,” and the risks discussed elsewhere in this report that may cause our or our industry’s actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activities, performance or achievements expressed or implied by such forward-looking statements.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of such statements. We are under no duty to update any of the forward-looking statements after the date of filing of this report or to conform such statements to actual results, except as may be required by law.

All references in this Annual Report to “Oxygen Biotherapeutics”, “we”, “our” and “us” means Oxygen Biotherapeutics, Inc.

ITEM 1—BUSINESS

Oxygen Biotherapeutics was originally formed as a New Jersey corporation in 1967 under the name Rudmer, David & Associates, Inc., and subsequently changed its name to Synthetic Blood International, Inc. Effective June 30, 2008, we changed the domiciliary state of the corporation to Delaware and changed the company name to Oxygen Biotherapeutics, Inc.

Oxygen Biotherapeutics is engaged in the business of developing biotechnology products with a focus on oxygen delivery to specific target tissues. We are currently developing Oxycyte®, a systemic perfluorocarbon, or PFC, product we believe is a safe and effective oxygen carrier for use in situations of acute ischemia. In addition, we have developed a family of perfluorocarbon-based oxygen carriers for use in personal care, topical wound healing, and other topical indications. While Oxycyte has been successful in two clinical trials and is currently being evaluated in a Phase II-b clinical trial for the treatment of traumatic brain injury, or TBI, we also plan to focus on developing our most advanced topical products: Dermacyte® and Wundecyte™, as we believe these products have a significant opportunity for near-term commercialization.

The principal function of human blood is to transport oxygen throughout the body. The lack of an adequate supply of oxygen as a result of blood loss can lead to organ dysfunction or death. The transfusion of human blood is presently the only effective means of immediately restoring diminished oxygen-carrying capacity resulting from blood loss. According to the AABB 2009 Nationwide Blood Collection and Utilization Report, over 15 million units of whole blood and red blood cells were transfused in the United States in 2008. This includes transfusions for trauma, surgery, unexpected blood loss, chronic anemia, and other general medical applications.

The use of donated blood in transfusion therapy, while effective in restoring an adequate supply of oxygen in the body of the recipient, has several limitations. Although testing procedures exist to detect the presence of certain diseases in blood, these procedures cannot eliminate completely the risk of blood-borne disease. Transfused blood also can be used only in recipients having a blood type compatible with that of the donor. Delays in treatment, resulting from the necessity of blood typing prior to transfusion, together with the limited shelf life of blood and the limited availability of certain blood types, impose constraints on the immediate availability of compatible blood for transfusion. There is no commercially available blood substitute in this country that addresses these problems. The regulatory authorities in the U.S. are very skeptical regarding blood substitutes and Oxygen Biotherapeutics assessed chances of getting a blood substitute approved by the U.S. Food and Drug Administration, or FDA, as very limited. Therefore, Oxygen Biotherapeutics changed its direction away from synthetic blood to oxygen to tissue delivery.

Oxycyte was originally developed as an oxygen carrier that could be used in cases of trauma, surgery, and other general medical applications. For trauma and emergency surgical procedures, Oxycyte's immediate bioavailability, universal compatibility, and the reduced risk of blood borne diseases provided potentially significant advantages over transfused blood and other proposed oxygen delivery systems based on biological material. Unfortunately, the use of PFCs as blood substitutes has, in general, shown disappointing results and led to significant skepticism in the medical community. However, we believe that there exists a variety of other acute medical conditions for which an effective oxygen carrier such as Oxycyte may be an ideal drug.

We are working with an international network of investigators and research and clinical institutions to evaluate the use of Oxycyte as a potential treatment for a broad range of disease indications. Working collaboratively, and through our own internal efforts, we have explored the potential for Oxycyte to be used for TBI, spinal cord injury, decompression sickness, and other neurological conditions.

Through our research collaborators, Oxycyte is also being evaluated in on-going preclinical trials for subarachnoid hemorrhage and decompression sickness. A research center in Europe is also conducting initial preclinical studies to evaluate Oxycyte to enhance imaging techniques and as a potential therapy for ischemic stroke.

We also have under development Vitavent™ (formerly called Fluorovent™), an oxygen exchange fluid for facilitating the treatment of lung conditions, and we have rights to a biosensor implant product that uses an enzyme process for measuring the glucose level in subcutaneous fluid.

Business Strategy

Our principal business objective is to discover, develop, and commercialize novel therapeutic products for disease indications that represent significant areas of clinical need and commercial opportunity. The key elements of our business strategy are outlined below.

Efficiently conduct clinical development to establish clinical proof of concept with our lead product candidates. Oxycyte represents a novel therapeutic modality for the treatment of traumatic brain injury and other neurological conditions. We are conducting clinical development in a number of clinical studies with the intent to establish proof of concept in a number of important disease areas where the oxygen carriers would be expected to have benefit. Our focus is on conducting well-designed studies early in the clinical development process to establish a robust foundation for subsequent development, partnership and expansion into complementary areas

Advance the development of the PFC therapeutic modality and supporting capabilities . A key aspect of PFCS is their ability to form a stable emulsion. This enables large scale production of the Oxycyte products, which drives product consistency, specificity and cost advantages over other blood-based therapies. We plan to build on this intrinsic advantage by improving our current production approaches, further developing new manufacturing approaches, and optimizing our supply chain to support late stage development and commercialization. Additionally, we will continue to refine our understanding of our products' activities and mechanisms of action to enable us to prepare the foundation for product enhancements and next generation opportunities.

Efficiently explore new high potential therapeutic applications, leveraging third-party research collaborations and our results from related areas . Our product candidates have shown promise in multiple disease areas. We are committed to exploring potential clinical indications where our therapies may achieve best-in-class profile, and where we can address significant unmet medical needs. In order to achieve this goal, over the past two years, we have established collaborative research relationships with investigators from research and clinical institutions and the United States Army and Navy. These collaborative relationships have enabled us to cost effectively explore where Oxycyte may have therapeutic relevance, and how it may be utilized to advance treatment over current clinical care. Additionally, we believe we will be able to leverage clinical safety data and preclinical results from some programs to support accelerated clinical development efforts in other areas, saving substantial development time and resources compared to traditional drug development.

Continue to expand our intellectual property portfolio. Our intellectual property is important to our business and we take significant steps to protect its value. We have ongoing research and development efforts, both through internal activities and through collaborative research activities with others, which aim to develop new intellectual property and enable us to file patent applications that cover new applications of our existing technologies or product candidates, including Oxycyte and other opportunities.

Enter into licensing or product co-development arrangements in certain areas, while out-licensing opportunities in non-core areas . In addition to our internal development efforts, an important part of our product development strategy is to work with collaborators and partners to accelerate product development, reduce our development costs, and broaden our commercialization capabilities. We believe that this strategy will help us to develop a portfolio of high quality product development opportunities, enhance our clinical development and commercialization capabilities, and increase our ability to generate value from our proprietary technologies.

Our Current Programs

Oxycyte®

Our Oxycyte oxygen carrier product is a PFC-based oil in water emulsion, which is provided to the patient intravenously. The physical-chemical properties of PFCs enable our product to concentrate oxygen from the lungs and transport it through the body releasing it along the way. Over a period of days Oxycyte is gradually exhaled through the lungs during the normal process of respiration. Oxycyte requires no cross matching, so it is immediately available and compatible with all patients' blood types. Oxycyte has an extended shelf life compared to blood and is provided as a sterile emulsion ready for intravenous administration. Because it contains no biological components, there is reduced risk of transmission of blood-borne viruses from human blood products. Further, since Oxycyte is based on readily available inert compounds, we believe it can be manufactured on a cost-effective basis in amounts sufficient to meet demand.

We received approval of our Investigational New Drug application, or IND, for severe TBI filed with the FDA and began Phase I clinical studies in October 2003, which were completed in December 2003. We submitted a report on the results to the FDA along with a Phase II protocol in 2004. Phase II-A clinical studies began in the fourth quarter 2004, and were completed in 2006. A further Phase II study protocol was filed with the FDA in the spring of 2008, but remained on clinical hold by the FDA due to safety concerns raised by the regulatory agency. In March 2011, we received confirmation of a $2.07 million, two-year cost reimbursement award from the U.S. Army to conduct safety related studies for Oxycyte. PFC emulsions, as a therapeutic class, are known to interact with the reticuloendothelial system as part of the clearance mechanism, as well as affect the number of circulating platelets. The studies supported by this grant will examine the effects of Oxycyte on the immune system, platelet function and distribution, as well as the safety and efficacy of platelet transfusion, which can be necessary for patients with TBI and related polytrauma. Additional studies under this grant will be conducted to evaluate the pharmacokinetics of PFCs in relevant species. We believe the results of these studies will support the safety profile of Oxycyte PFC emulsion and adequately address the FDA's safety concerns. The aforementioned comprehensive preclinical program is under way, and we have sought FDA input and guidance with the aim of ensuring that the data collected will answer the questions regulators raise. We expect to commit a substantial portion of our financial and business resources over the next three years to testing Oxycyte and advancing this product to regulatory approval for use in one or more medical applications.

Despite the FDA's postponement of Oxycyte trials in the United States, we are authorized to continue our TBI clinical studies abroad. After receiving the FDA clinical hold, we filed a revised protocol as a dose-escalation study with the regulatory authorities in Switzerland and Israel. The relevant Swiss regulatory body approved the protocol in August 2009, and the Israel Ministry of Health approved the protocol in September 2009. The new study began in October 2009. In March 2010, we determined that it is feasible to simplify the trial design and also reduce the number of patients to be enrolled. In May 2010, we entered into a relationship with a contract research organization, or CRO, to assist us with plans to expand our study, possibly into India, and to initiate five to 10 new sites for our Phase IIb clinical trial. At that time, we believed study objectives as well as safety and efficacy endpoints would remain unchanged, and we believed the study could be concluded faster and more economically with these optimizations. The first of three cohorts has been completed and we were authorized by the Swiss and Israeli regulatory authorities to initiate the second cohort. Despite their authorization, we stopped enrollment in order to reevaluate the protocol's patient enrollment parameters, secure our cGMP supply of Oxycyte, review our contractor and clinical sites, and examine the possibility of opening clinical sites in other countries. At this time, we have secured our cGMP supply of Oxycyte. We are in the process of reviewing our CRO agreement and existing clinical sites. Our objective is to resume enrollment in the second cohort during the third quarter of fiscal year 2013. Upon completion of the Phase II trials, a Phase III trial will need to be implemented. In that instance, we would seek a partner to either conduct the Phase III trials, or collaborate with us to conduct the trials.

Should Oxycyte successfully progress in clinical testing and if it appears regulatory approval for one or more medical uses is likely, either in the United States or in another country, we intend to evaluate our options for commercializing the product. These options include licensing Oxycyte to a third party for manufacture and distribution, manufacturing Oxycyte ourselves for distribution through third party distributors, manufacturing and selling the product ourselves, or establishing some other form of strategic relationship for making and distributing Oxycyte with a participant in the pharmaceutical industry. We are currently investigating and evaluating all options.

We believe that important competitive factors in the market for oxygen carrier products will include the relative speed with which competitors can develop their respective products, complete the clinical testing and regulatory approval process, and supply commercial quantities of their products to the market. In addition to these factors, competition is expected to be based on the effectiveness of oxygen carrier products and the scope of the intended uses for which they are approved, the scope and enforceability of patent or other proprietary rights, product price, product supply, and marketing and sales capability. We believe that our competitive position will be significantly influenced by the timing of the clinical testing and regulatory filings for Oxycyte, our ability to maintain and enforce our proprietary rights covering Oxycyte and its manufacturing process, and our ability to develop capabilities for manufacturing and distributing the product ourselves or with others, should we obtain regulatory approval.

Dermacyte®

The Dermacyte line of topical cosmetic products contains our patented PFC technology, and other known cosmetic ingredients to promote the appearance of skin health and other desirable cosmetic benefits. Dermacyte is designed to provide a moist and oxygen-rich environment for the skin when it is applied topically, even in small amounts. Dermacyte Concentrate has been formulated as a cosmetic in our lab and Dermacyte Eye Complex was created by a contract formulator, with the patent held by Oxygen Biotherapeutics. Both formulas have passed required safety and toxicity tests in the United States, and we have filed a Cosmetic Product Ingredient Statement, or CPIS with the FDA. The market for oxygen-carrying cosmetics includes anti-aging, anti-wrinkle, skin abrasions and minor skin defects.

In September 2009, we started production of our first commercial product under our topical cosmetic line, Dermacyte Concentrate. We produced and sold a limited pre-production batch in November 2009 as a market acceptance test. The product was sold in packs of 8 doses of 0.4ml. Based on the test market results we identified specific market opportunities for this product and reformulated Dermacyte Concentrate for better product stability. Marketing and shipments of the new Dermacyte Concentrate formulation began in April 2010. We worked with a contract formulator in California to develop the Dermacyte Eye Complex which contains PFC technology as well as other ingredients beneficial to the healthy appearance of the skin around the eyes.

Since June 2010 we have marketed and sold these products through www.DermacyteUS.com (previously www.buydermacyte.com) and to dermatologists, plastic surgeons and medical spas with a combination of in-house sales, independent sales agents and exclusive distributors. We had hired a sales director based in North Carolina, and had added sales people in South Florida and California. From October 2011 through February 2012, we evaluated that sales strategy. The outcome was that we adjusted our growth strategy to focus exclusively on the North Carolina and South Florida markets while we focused on developing new, improved packaging for the existing commercial products, as well as reformulating the products, and expanding the line to include more skin care products. Expansion into additional markets using internal sales staff or contract sales professionals will be evaluated based on success in these two markets. If successful, we intend to add more territories with agents or distributors. Partnerships, out licensing opportunities and other strategic alternatives are under consideration for the Dermacyte line.

In December 2010 we entered into an agreement with the newly formed, independently owned and operated Dermacyte Switzerland Ltd., or DSL, of Zurich for the sale of Dermacyte products. Per the terms of the agreement, DSL had exclusive rights to sell our Dermacyte skin care products throughout the European Union, Switzerland and Russia. Under the agreement, DSL was required to purchase a minimum of 40,000 units of Dermacyte products by December 31, 2011. After December 31, 2011, the agreement required an annual compounding growth rate in minimum purchase quantities of 10 percent. The agreement also granted DSL the option to add South America as an exclusive territory if purchase volume milestones were achieved. DSL was granted the rights to use our product trademarks in their exclusive territories. As of April 30, 2012, this agreement had been terminated as the minimum purchase volume was not achieved.

In March 2011 we entered into an agreement with the independently owned and operated Comercial Uni2, SA de C.V., or CU2, of Col del Valle, Mexico for the sale of Dermacyte products. Per the terms of the agreement, CU2 had exclusive rights to sell our Dermacyte skin care products throughout Mexico. Under the agreement, CU2 was required to purchase a minimum of 10,000 units of Dermacyte products by December 31, 2011, increasing to 20,000 and 35,000 units by December 31, 2012 and 2013, respectively. The agreement also granted CU2 the option to add Central America as an exclusive territory if purchase volume milestones were achieved. CU2 was granted the rights to use our product trademarks in their exclusive territories. As of April 30, 2012, this agreement had been terminated as the minimum purchase volume was not achieved.

Additional potential cosmetic applications of our PFC technology that are under development include Dermacyte moisturizing day cream with SPF, night cream, and brightening serum. Management has finalized formulations for these three products; however, no additional commercialization steps are currently being taken.

The cosmetic industry is highly competitive, with a number of established large companies, as well as many smaller companies. Many of these companies have greater financial resources and marketing capabilities for product candidates.

Dermatology

We intend to develop additional clinical research protocols and conduct proof-of-concept studies for topical indications, such as the treatment of acne, rosacea, pruritis, psoriasis, and dermatitis. In January 2012 we initiated our first proof-of-concept study in India to assess the potential of our topical gel to reduce the itch (pruritis) associated with histamine-mediated allergic skin reactions. In May 2012, we revealed results of this study which showed that our topical gel elicited a larger reduction in Visual Analogue Scale scores following a standard histamine skin prick compared to placebo. The sample size of this study prevented a demonstration of statistical significance so further research is necessary to evaluate its effectiveness. We believe that we will need the support of partners in this sector to commercialize these dermatologic product candidates. We can provide no assurance that the topical indications we have under development will prove their claims and be successful commercial products.

Wundecyte™

Wundecyte is a novel gel developed under a contract agreement with a lab in Virginia that is designed to be used as a wound-healing gel. In July 2009, we filed a 510K medical device application for Wundecyte with the FDA. Several oxygen-producing and oxygen-carrying devices were cited as predicate devices. The FDA response was that the application likely would be classified as a combination device. The drug component of the combination device will require extensive preclinical and clinical studies to be conducted prior to potential commercialization of the product.

We have also developed a prototype for an oxygen-generating bandage that can be combined with Wundecyte gel. Wundecyte gel and the oxygen-generating bandage both entered preclinical testing in our first quarter of fiscal 2011. The studies were designed to measure factors such as time to wound closure and reduction in scar tissue formation as compared to a control group. Results showed an apparent increase in epithelial thickness versus the control. The treatment did not cause adverse effects and the models tolerated the treatment well. Our current product development plan is for Wundecyte to emerge into more complex wound-healing indications, also in combination with oxygen-producing technologies based on hydrogen peroxide. In December 2010 we signed a binding letter of intent with Sarasota Medical Products, Inc., or SMP, of Sarasota, Florida to determine the feasibility of pursuing a joint research and development venture for treating chronic ischemic wounds. The venture was to be based on combining Wundecyte with SMP's topical medical devices. No significant development activities have resulted from this agreement as of April 30, 2012.

Additionally, we are developing preclinical research protocols for the treatment of burns and other topical indications based on our PFC technology. However, we can provide no assurance that the topical indications we have under development will prove their claims and be successful commercial products.

Suppliers

We are actively pursuing agreements with multiple manufacturers to ensure we are able to consistently obtain our raw materials and topical products timely, within our defined specifications, and at competitive prices.

Our FtBu PFC currently is manufactured by Fluoromed. We have obtained exclusive manufacturing rights for our PFC, and we strengthened these rights with documentation of the manufacturer's critical formulations and processes. This documentation is being held in escrow and will revert to us in the event the manufacturer undergoes a change-of-control or fails to remain a going concern.

In May 2009 we entered into a supply agreement with Hospira, Inc. to manufacture our Oxycyte emulsion in commercial-sized batches for clinical use under Current Good Manufacturing Practice (cGMP) standards. We learned that the FDA issued a warning letter to Hospira on April 12, 2010. In the letter, the FDA told Hospira that it had identified significant violations of cGMP regulations at Hospira's manufacturing facilities in North Carolina where Oxycyte was being produced. Among other things, the warning letter indicated to Hospira that these violations cause the drug products that it manufactures in these facilities to be adulterated. These issues were successfully remediated and their manufacturing facilities resumed operations. Subsequently, we expanded the search for manufacturers and identified potential alternative domestic sources to manufacture Oxycyte under cGMP standards for our clinical trials. On August 30, 2011, we and Hospira entered into a Termination Agreement pursuant to which we mutually agreed to terminate the supply agreement related to the development, manufacture, supply and distribution of Oxycyte. No early termination penalties or other payments were incurred by either party in connection with the termination.

In September 2011 we entered into a development and supply agreement with NextPharma, Inc. to manufacture our Oxycyte emulsion for clinical use under cGMP standards. In January 2012, NextPharma transferred the manufacturing process from Hospira, our previous supplier, to their cGMP facilities and demonstrated their ability to produce clinical grade Oxycyte.

Our cosmetic formulations are manufactured by multiple domestic contract manufacturers.

Intellectual Property

We rely on a combination of patent applications, patents, trade secrets, proprietary know-how, trademarks, and contractual provisions to protect our proprietary rights. We believe that to have a competitive advantage, we must develop and maintain the proprietary aspects of our technologies. Currently, we require our officers, employees, consultants, contractors, manufacturers, outside scientific collaborators and sponsored researchers, and other advisors to execute confidentiality agreements in connection with their employment, consulting, or advisory relationships with us, where appropriate. We also require our employees, consultants, and advisors who we expect to work on our products to agree to disclose and assign to us all inventions conceived during the work day, developed using our property, or which relate to our business.

To date, we own or in-license the rights to 8 U.S. and foreign patents. In addition, we have numerous U.S. patent applications pending that are complemented by the appropriate foreign patent applications related to our product candidates and proprietary processes, methods and technologies. Our issued and in-licensed patents, as well as our pending patents, expire between 2014 and 2030.

We have:

- three U.S. patents (5,824,703; 5,840,767; 6,167,887), three Australian patents (690,277; 722,417; 759,557), and two Canadian patents (2,239,170; 2,311,122) pertaining to the use and application of PFCs as gas transport agents in blood substitutes and liquid ventilation with an average remaining life of approximately 5 years;

- exclusive in-licenses to three fundamental gas transport patent applications that represent the core technology used in our products and product candidates with an average remaining life of approximately 17 years; and

- numerous patent applications for treatment of several medical and dermatological conditions such as TBI, acne, burns and wounds with an average remaining life of approximately 18 years.

Our patent and patent applications include claims covering:

- methods to treat certain diseases and conditions and for biological gas exchange;

- therapies for burn and wound victims;

- delivery of oxygenated PFC;

- various formulations containing PFC; and

- methods and compositions for controlled and sustained production and delivery of peroxide and/or oxygen for biological and industrial applications.

We have received U.S. trademark registrations for Oxycyte®, Dermacyte®, Defense Medicine® and Oxygen Biotherapeutics, Employing O2, Preserving Life®. We have trademark applications pending for the following marks: Acnecyte™, Wundecyte™ and Vitavent™.

In addition, we own numerous domain names relevant to our business, such as www.oxygenbiotherapeutics.com, www.DermacyteUS.com, www.oxybiomed.com, and others.

Government regulation

The manufacture and distribution of Oxycyte, as well as our other products, and the operation of our manufacturing facilities will require the approval of United States government authorities as well as those of foreign countries. In the United States, the FDA regulates medical products. The Federal Food, Drug and Cosmetic Act and the Public Health Service Act govern the testing, manufacture, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our medical products. In addition to FDA regulations, we are also subject to other federal and state regulations, such as the Occupational Safety and Health Act and the Environmental Protection Act. Product development and approval within this regulatory framework requires a number of years and involves the expenditure of substantial funds.

The steps required before a biological product may be sold commercially in the United States include preclinical testing, the submission to the FDA of an IND, clinical trials in humans to establish the safety and effectiveness of the product, the submission to the FDA of a Biologics License Application, or BLA, relating to the product and the manufacturing facilities to be used to produce the product for commercial sale, and FDA approval of a BLA. After a BLA is submitted there is an initial review by the FDA to be sure that all of the required elements are included in the submission. There can be no assurance that the application will be accepted for filing or that the FDA may not issue a refusal to file, or RTF. If a RTF is issued, there is opportunity for dialogue between the sponsor and the FDA in an effort to resolve all concerns. There can be no assurance that such a dialogue will be successful in leading to the filing of the BLA. If the submission is filed, there can be no assurance that the full review will result in product approval.

Preclinical tests include evaluation of product chemistry and studies to assess the safety and effectiveness of the product and its formulation. The results of the preclinical tests are submitted to the FDA as part of the application. The goal of clinical testing is the demonstration in adequate and well-controlled studies of substantial evidence of the safety and effectiveness of the product in the setting of its intended use. The results of preclinical and clinical testing are submitted to the FDA from time to time throughout the trial process. In addition, before approval for the commercial sale of a product can be obtained, results of the pre clinical and clinical studies must be submitted to the FDA in the form of a BLA. The testing and approval process requires substantial time and effort and there can be no assurance that any approval will be granted on a timely basis, if at all. The approval process is affected by a number of factors, including the severity of the condition being treated, the availability of alternative treatments and the risks and benefits demonstrated in clinical trials. Additional preclinical studies or clinical trials may be requested during the FDA review process and may delay product approval. After FDA approval for its initial indications, further clinical trials may be necessary to gain approval for the use of a product for additional indications. The FDA may also require post-marketing testing, which can involve significant expense, to monitor for adverse effects.

Among the conditions for BLA approval is the requirement that the prospective manufacturer's quality controls and manufacturing procedures conform to FDA requirements. In addition, domestic manufacturing facilities are subject to biennial FDA inspections and foreign manufacturing facilities are subject to periodic FDA inspections or inspections by the foreign regulatory authorities with reciprocal inspection agreements with FDA. Outside the United States, we are also subject to foreign regulatory requirements governing clinical trials and marketing approval for medical products. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary widely from country to country.

Our regulatory strategy is to pursue Phase II clinical testing and initial regulatory approval of Oxycyte in Switzerland and Israel. We then intend to use the results of these tests to pursue FDA approval for Phase III clinical tests and marketing approval of Oxycyte in the United States.

Research and Development

Our research and development efforts have been, and will continue to be focused on furthering the development and manufacture of Oxycyte for its use in clinical indications, primarily traumatic brain injury, spinal cord injury, and decompression sickness. We will also focus on developing Dermacyte and Wundecyte through further investments in preclinical and clinical studies. During the fiscal years ended April 30, 2012 and 2011, we spent approximately $2.5 million and $2.7 million, respectively, on research and development.

Employees

We believe that our success will be based on, among other things, the quality of our clinical programs, our ability to invent and develop superior and innovative technologies and products, and our ability to attract and retain capable management and other personnel. We have assembled a high quality team of scientists, clinical development managers, and executives with significant experience in the biotechnology and pharmaceutical industries.

As of April 30, 2012, we had 15 full-time employees, 4 with Ph.D. degrees. In addition to our employees, we also use the service and support of outside consultants and advisors. None of our employees is represented by a union, and we believe relationships with our employees are good.

ITEM 1A—RISK FACTORS

Risks Related to Our Financial Position and Need for Additional Capital

The Preferred Stock contains covenants that may limit our business flexibility.

In December 2011, we completed a registered direct offering (the "2011 Offering") consisting of Series A Convertible Preferred Stock, $0.0001 par value per share (the "Preferred Stock") and warrants (the "2011 Warrants") to purchase shares of common stock, par value $0.0001 per share. The Preferred Stock imposes significant restrictions on us that may restrict our ability to pursue our business strategies. These restrictions prohibit or limit, among other things:

- the incurrence of additional indebtedness without the consent of the holders of the Preferred Stock;
- the issuance of additional securities, subject to standard exceptions; and
- the payment of cash dividends on shares of capital stock outstanding.

We are subject to substantial penalties if we breach the terms of the Preferred Stock

The Certificate of Designations that governs the Preferred Stock provides for various and severe penalties under various circumstances, including breach of the terms of the Certificate of Designations and any of the transaction documents relating to the 2011 Offering. These penalties include, but are not limited to, an increase in the dividend rate from 7% to 15%, and repayment of 125% of the then-outstanding stated value of the Preferred Stock in cash. In the event that any of these penalties are triggered, we may have insufficient funds to pay such penalties, which may adversely impact our ability to continue as a going concern.

The second additional closing of our December 2011 registered direct offering may not occur.

While our 2011 Offering provided for an aggregate amount of up to $7.5 million, only $3.5 million of the offered securities were purchased initially. In June 2012, an additional $2.5 million of the offered securities were purchased. The remainder of the 2011 Offering, which may be up to $1.5 million, is currently scheduled to be completed in an additional closing in September 2012. However, the final closing is subject to various conditions, including conditions that are outside of our control, including, but not limited to, a minimum stock price prior to the final closing and a minimum trading volume limitation. In the event that the final closing does not occur, we would need to find alternative sources of capital to continue as a going concern, and there can be no assurance that such funding would be available on favorable terms or at all.

We are a development stage company and have a history of net losses. Currently, we have two products available for commercial sale, and to date we have not generated any significant product revenue. As a result, we expect to continue to incur substantial net losses for the foreseeable future, which raises doubt about our ability to continue as a going concern.

We began research and development activities in 1990 and are a development stage company. We have incurred significant net losses and negative cash flow in each year since our inception, including net losses of approximately $15.7 million and $10.4 million for the years ended April 30, 2012 and 2011, respectively. As of April 30, 2012 our accumulated deficit was approximately $107.6 million. We have devoted most of our financial resources to research and development, including our preclinical development activities and clinical trials. No revenues have been generated to date from commercial sales of any of our products, except for limited revenues from our topical cosmetic product, Dermacyte. We expect to have substantial expenses as we continue with our Phase II-B clinical program for Oxycyte, our most advanced clinical product candidate, and as we conduct other clinical trials. In addition, if we are required by applicable regulatory authorities, including the FDA, to perform studies in addition to those we currently anticipate, our expenses will increase beyond expectations and the timing of any potential product approval may be delayed. We also expect an increase in our expenses associated with our manufacturing work and the commercialization of our Dermacyte cosmetic line. In addition, we expect to continue to incur costs to support operations as a public company. As a result, we may continue to incur substantial net losses and negative cash flow for the foreseeable future. These losses and negative cash flows have had, and will continue to have, an adverse effect on our stockholders' equity and working capital.

Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to accurately predict the timing or amount of substantial expenses or when, or if, we will be able to achieve or maintain profitability. We have financed our operations primarily through the sale of equity securities and debt financings. The size of our future net losses will depend, in part, on the rate of growth of our expenses and the rate of growth of our revenues. If we are unable to develop and commercialize our other product candidates or if sales revenue from Dermacyte is insufficient, we will not achieve profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability.

As a result of the foregoing circumstances our independent registered public accounting firm has included, and is likely in the future to include, an explanatory paragraph in their audit opinions based on uncertainty regarding our ability to continue as a going concern. An audit opinion of this type may negatively impact our ability to obtain debt or equity financing in the future.

We could incur significant tax liabilities under Section 409A of the Internal Revenue Code and other tax penalties.

As a result of our review of option grants made by us between February 1998 and April 2009, we have determined that certain options granted in prior years may have been non-compliant with Section 409A of the Internal Revenue Code, or the IRC, including options granted with an exercise price below fair market value on the date of grant and options that were modified such that they may have become non-compliant with Section 409A. The primary adverse tax consequence of Section 409A non-compliance is that the holders of non-compliant options are taxed on the value of such options as they vest, and annually thereafter until they are exercised. In addition to ordinary income taxes, holders of non-compliant options are subject to a 20% penalty tax under Section 409A (and, as applicable, similar excise taxes under state laws).

Because virtually all holders of stock options granted by us were not involved in or aware that the pricing and/or modification of their options raised these issues, we may take actions to address certain of the adverse tax consequences that may apply to these holders. In addition, on March 17, 2011 we entered into indemnification agreements with our executive officers that indemnify those officers from potential Section 409A tax liabilities arising from their prior option awards.

In addition to adverse consequences for option holders, we have determined that certain payroll taxes, interest and penalties may apply to us under various sections of the IRC (and, as applicable similar state and foreign tax statutes) related to the potential Section 409A non-compliance. As of April 30, 2012, we have accrued $550,000, which represents our best estimate of the potential liability, in other current liabilities for the contingent liability. Our investigation of the matter is still on-going and there exists the possibility of adverse outcomes that we estimate could reach approximately $500,000 beyond our recorded amount. Were unfavorable outcomes to occur, there exists the possibility of a material adverse impact on our financial statements for the period in which the effects become reasonably estimable.

We have a limited operating history, and we expect a number of factors to cause our operating results to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.

Our operations, to date, have been primarily limited to organizing and staffing our company, developing our technology and undertaking preclinical studies and clinical trials of our product candidates. We have not yet obtained regulatory approvals for any of our clinical product candidates. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history.

Specifically, our financial condition and operating results have varied significantly in the past and will continue to fluctuate from quarter-to-quarter and year-to-year in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include the following factors, among others:

- our ability to obtain additional funding to develop our product candidates;

- the need to obtain regulatory approval of our most advanced product candidate, Oxycyte, for the potential treatment of TBI;

- potential risks related to any collaborations we may enter into for our product candidates, including Oxycyte;
- delays in the commencement, enrollment and completion of clinical testing, as well as the analysis and reporting of results from such clinical testing;
- the success of clinical trials of our Oxycyte product candidate or future product candidates;
- any delays in regulatory review and approval of product candidates in development;
- market acceptance of our cosmetic product candidates;
- our ability to establish an effective sales and marketing infrastructure;
- competition from existing products or new products that may emerge;
- the ability to receive regulatory approval or commercialize our products;
- potential side effects of our product candidates that could delay or prevent commercialization;
- potential product liability claims and adverse events;
- potential liabilities associated with hazardous materials;
- our ability to maintain adequate insurance policies;
- our dependency on third-party manufacturers to supply or manufacture our products;
- our ability to establish or maintain collaborations, licensing or other arrangements;
- our ability, our partners' abilities, and third parties' abilities to protect and assert intellectual property rights;
- costs related to and outcomes of potential ongoing property litigation;
- compliance with obligations under intellectual property licenses with third parties;
- our ability to adequately support future growth; and
- our ability to attract and retain key personnel to manage our business effectively.

Due to the various factors mentioned above, and others, the results of any prior quarterly or annual periods should not be relied upon as indications of our future operating performance.

We will need substantial additional funding and if we are unable to raise capital when needed, we would be forced to delay, reduce or eliminate our product development programs.

Developing biopharmaceutical products, including conducting preclinical studies and clinical trials and establishing manufacturing capabilities, is expensive. We expect our research and development expenses to increase in connection with our ongoing activities, particularly as we focus on and proceed with our Phase II-B clinical program and begin clinical trials for our other products. In addition, our expenses could increase beyond expectations if applicable regulatory authorities, including the FDA, require that we perform additional studies to those that we currently anticipate, in which case the timing of any potential product approval may be delayed. We believe that as of July 20, 2012 our existing cash and cash equivalents will be sufficient to fund our projected operating requirements through December 31, 2012. We will need substantial additional capital in the future in order to complete the development and commercialization of Oxycyte and to fund the development and commercialization of future product candidates. Until we can generate a sufficient amount of product revenue, if ever, we expect to finance future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. Such funding, if needed, may not be available on favorable terms, if at all. In the event we are unable to obtain additional capital, we may delay or reduce the scope of our current research and development programs and other expenses.

If adequate funds are not available, we may be required to delay, reduce the scope of, or eliminate one or more of our research or development programs or our commercialization efforts. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience additional significant dilution, and debt financing, if available, may involve restrictive covenants. To the extent that we raise additional funds through collaboration and licensing arrangements, it may be necessary to relinquish some rights to our technologies or our product candidates or to grant licenses on terms that may not be favorable to us. We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors, including the factors discussed elsewhere in this “Risk Factors” section. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the scope, rate of progress and cost of our clinical trials and other research and development activities;
- the costs and timing of regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the effect of competing technological and market developments;
- the terms and timing of any collaboration, licensing or other arrangements that we may establish;
- the cost and timing of completion of clinical and commercial-scale manufacturing activities; and
- the costs of establishing sales, marketing and distribution capabilities for our cosmetic products and any product candidates for which we may receive regulatory approval.

Risks Related to Commercialization and Product Development

We are limited in the number of products we can simultaneously pursue and therefore our survival depends on our success with a small number of product opportunities.

We have limited financial resources, so at present we are primarily focusing these resources on developing our Oxycyte oxygen carrier product, our Wundecyte topical wound product and our Dermacyte cosmetic products. We have delayed development on Vitavent, our oxygen-carrying liquid, until we find a licensing partner willing to pursue development or obtain additional financing to pursue development ourselves. At present we intend to commit most of our resources to advancing Oxycyte to the point it receives regulatory approval for one or more medical uses, and if this effort is unsuccessful we may not have resources to pursue development of our other products and our business would terminate. Furthermore, by delaying development of Vitavent, this technology may become obsolete by the time we have sufficient capital to resume development and testing, so the funds expended on this product to date would be lost, as well as our opportunity to benefit if the product could be successfully developed.

The commercialization of our cosmetic product line may not be successful.

In September 2009, we started production of our first commercial product under the topical cosmetic line Dermacyte. We produced and sold a limited preproduction batch on November 16, 2009 for orders taken through our website at dermacyteUS.com (formerly buydermacyte.com). We currently have two Dermacyte products available for retail sale, and we anticipate that two more products will be available for retail sale during the second fiscal quarter of 2013. We currently market and sell this product through our website and through a limited direct sales force as we seek to identify and retain commercial distributors and/or license partners.

Marketing cosmetic products is a very speculative venture and reaching consumers through web-based marketing is dependent on many factors over which we have no control. There is no guarantee that we will enter into a license or distribution agreement with other parties, or that the consumers will buy our cosmetic products, which could negatively, affect our only existing source of revenue.

We have little experience marketing a commercial product, and if we are unable to establish, or access an effective and focused sales force and marketing infrastructure, we will not be able to commercialize our product candidates successfully.

Commercializing our product candidates will require that we establish significant internal sales, distribution and marketing capabilities, which we do not currently have. For example, in order to commercialize Dermacyte, we are developing a focused sales force and marketing capabilities in the United States directed at dermatologists and medical spas. The development of a focused sales and marketing infrastructure for our domestic operations will require substantial resources, will be expensive and time consuming and could negatively impact our commercialization efforts, including delay of any product launch. We may not be able to hire a focused sales force in the United States that is sufficient in size or has adequate expertise in the markets that we intend to target. If we are unable to establish our focused sales force and marketing capability for our products, we may not be able to generate significant product revenue, may generate increased expenses and may never become profitable.

We expect intense competition with respect to our existing and future cosmetic product candidates.

The cosmetic industry is highly competitive, with a number of established, large companies, as well as many smaller companies. Many of these companies have greater financial resources and marketing capabilities for product candidates.

Competitors may seek to develop alternative formulations of our product candidates that address our targeted indications. The commercial opportunity for our cosmetic product candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our products. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- research and development resources, including personnel and technology;
- expertise in prosecution of intellectual property rights;
- manufacturing and distribution experience; and
- sales and marketing resources and experience.

As a result of these factors, our competitors may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our cosmetic product candidates. Our competitors may also develop products that are more effective, useful and less costly than ours and may also be more successful than us in manufacturing and marketing their products.

We currently have no approved drug products for sale and we cannot guarantee that we will ever have marketable drug products.

We currently have no approved drug products for sale. The research, testing, manufacturing, labeling, approval, selling, marketing, and distribution of drug products are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, with regulations differing from country to country. We are not permitted to market our product in the United States until we receive approval of a new drug application, or an NDA, from the FDA for each product candidate. We have not submitted an NDA or received marketing approval for any of our product candidates. Obtaining approval of an NDA is a lengthy, expensive and uncertain process. Markets outside of the United States also have requirements for approval of drug candidates which we must comply with prior to marketing. Accordingly, we cannot guarantee that we will ever have marketable drug products.

The development of Oxycyte is subject to a high level of technological risk.

We expect to devote a substantial portion of our financial and managerial resources to pursuing Phase II and Phase III clinical trials on Oxycyte over the next three years. The biomedical field has undergone rapid and significant technological changes. Technological developments may result in Oxycyte becoming obsolete or non-competitive before we are able to recover any portion of the research and development and other expenses we have incurred to develop and clinically test Oxycyte. As our opportunity to generate substantial product revenues within the next four to five years is most likely dependent on successful testing and commercialization of Oxycyte for surgical and similar oxygen delivery applications, any such occurrence would have a material adverse effect on our operations and could result in the cessation of our business.

We may be required to conduct additional clinical trials in the future, which are expensive and time consuming, and the outcome of the trials is uncertain.

We expect to commit a substantial portion of our financial and business resources over the next three years to testing Oxycyte and advancing this product to regulatory approval for use in one or more medical applications. We completed Phase I clinical trials on Oxycyte in December 2003 and completed Phase II-A clinical testing in the fourth quarter of 2004 with filings completed in the second quarter of 2008. A Phase II-B study protocol was filed with the FDA in the spring of 2008, but was put on clinical hold due to safety concerns raised by the FDA. We then filed a revised protocol as a dose-escalation study with the regulatory authorities in Switzerland and Israel. Swissmedic approved the protocol in August 2009 and the Israel Ministry of Health in September 2009. The new study began in October 2009 and is currently under way both in Switzerland and Israel. If this study is successful (of which there is no assurance) we will need to conduct further trials. All of these clinical trials and testing will be expensive and time consuming and the timing of the regulatory review process is uncertain. The applicable regulatory agencies may suspend clinical trials at any time if they believe that the subjects participating in such trials are being exposed to unacceptable health risks. We cannot ensure that we will be able to complete our clinical trials successfully or obtain FDA or other governmental or regulatory approval of Oxycyte, or that such approval, if obtained, will not include limitations on the indicated uses for which Oxycyte may be marketed. Our business, financial condition and results of operations are critically dependent on obtaining capital to advance our testing program and receiving FDA and other governmental and regulatory approvals of Oxycyte. A significant delay in or failure of our planned clinical trials or a failure to achieve these approvals would have a material adverse effect on us and could result in major setbacks or jeopardize our ability to continue as a going concern.

The market may not accept our products.

Even if regulatory approval is obtained, there is a risk that the efficacy and pricing of Oxycyte, considered in relation to Oxycyte's expected benefits, will not be perceived by health care providers and third-party payers as cost-effective, and that the price of Oxycyte will not be competitive with other new technologies or products. Our results of operations may be adversely affected if the price of Oxycyte is not considered cost-effective or if Oxycyte does not otherwise achieve market acceptance.

There are significant competitors developing similar products.

If approved for commercial sale, Oxycyte will compete directly with established therapies for oxygen delivery and acute blood loss and may compete with other technologies currently under development. Oxycyte may not have advantages that will be significant enough to cause medical professionals to adopt it rather than continue to use established therapies or to adopt other new technologies or products. There is also a risk that the cost of Oxycyte will not be competitive with the cost of established therapies or other new technologies or products. Our commercial supply price under our agreement with NextPharma, the current manufacturer of Oxycyte, has not yet been determined. This supply price will affect the price we charge our customers for the product. As there is currently no oxygen-delivery product of our kind on the market, competition to develop an efficacious and accepted product is intense. Several companies have developed or are in the process of developing technologies that are, or in the future may be, the basis for products that will compete with Oxycyte. Certain of these companies are pursuing different approaches or means of accomplishing the therapeutic effects sought to be achieved through the use of Oxycyte.

These companies and others may have substantially greater financial resources, larger research and development staffs, more extensive facilities and more experience in testing, manufacturing, marketing and distributing medical products than we do. It is possible that one or more other companies will succeed in developing technologies or products that will become available for commercial use prior to Oxycyte that could be more effective or less costly than Oxycyte or that would render Oxycyte obsolete or non-competitive.

Any collaboration we enter with third parties to develop and commercialize our product candidates may place the development of our product candidates outside our control, may require us to relinquish important rights or may otherwise be on terms unfavorable to us.

We may enter into collaborations with third parties to develop and commercialize our product candidates, including Oxycyte. Our dependence on future partners for development and commercialization of our product candidates would subject us to a number of risks, including:

- we may not be able to control the amount and timing of resources that our partners may devote to the development or commercialization of product candidates or to their marketing and distribution;

- partners may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;

- disputes may arise between us and our partners that result in the delay or termination of the research, development or commercialization of our product candidates or that result in costly litigation or arbitration that diverts management's attention and resources;

- partners may experience financial difficulties;

- partners may not properly maintain or defend our intellectual property rights, or may use our proprietary information, in such a way as to invite litigation that could jeopardize or invalidate our intellectual property rights or proprietary information or expose us to potential litigation;

- business combinations or significant changes in a partner's business strategy may adversely affect a partner's willingness or ability to meet its obligations under any arrangement;

- a partner could independently move forward with a competing product candidate developed either independently or in collaboration with others, including our competitors; and

- the collaborations with our partners may be terminated or allowed to expire, which would delay the development and may increase the cost of developing our product candidates.

Delays in the commencement, enrollment and completion of clinical testing could result in increased costs to us and delay or limit our ability to obtain regulatory approval for our product candidates.

Delays in the commencement, enrollment and completion of clinical testing could significantly affect our product development costs. We do not know whether planned clinical trials for Oxycyte will begin on time or be completed on schedule, if at all. The commencement and completion of clinical trials requires us to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs for the same indication as our product candidates or may be required to withdraw from our clinical trial as a result of changing standards of care or may become ineligible to participate in clinical studies. The commencement, enrollment and completion of clinical trials can be delayed for a variety of other reasons, including delays related to:

- reaching agreements on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;

- obtaining regulatory approval to commence a clinical trial;

- obtaining institutional review board, or IRB, approval to conduct a clinical trial at numerous prospective sites;

- recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including meeting the enrollment criteria for our study and competition from other clinical trial programs for the same indication as our product candidates;

- retaining patients who have initiated a clinical trial but may be prone to withdraw due to the treatment protocol, lack of efficacy, personal issues or side effects from the therapy or who are lost to further follow-up;

- maintaining and supplying clinical trial material on a timely basis; and

- collecting, analyzing and reporting final data from the clinical trials.

In addition, a clinical trial may be suspended or terminated by us, the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- unforeseen safety issues or any determination that a trial presents unacceptable health risks; and
- lack of adequate funding to continue the clinical trial, including unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our CROs and other third parties.

Changes in regulatory requirements and guidance may occur and we may need to amend clinical trial protocols to reflect these changes with appropriate regulatory authorities. Amendments may require us to resubmit our clinical trial protocols to IRBs for re-examination, which may impact the costs, timing or successful completion of a clinical trial. If we experience delays in the completion of, or if we terminate, our clinical trials, the commercial prospects for our product candidates will be harmed, and our ability to generate product revenues will be delayed. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. Even if we are able to ultimately commercialize our product candidates, other therapies for the same or similar indications may have been introduced to the market and established a competitive advantage.

Risks Relating to Regulatory Matters

Our activities are and will continue to be subject to extensive government regulation, which is expensive and time consuming, and we will not be able to sell our Oxycyte product without regulatory approval.

Our research, development, testing, manufacturing, marketing and distribution of Oxycyte products are, and will continue to be, subject to extensive regulation, monitoring and approval by the FDA and other regulatory agencies. There are significant risks at each stage of the regulatory scheme.

Product approval stage

During the product approval stage we attempt to prove the safety and efficacy of our product for its indicated uses. There are numerous problems that could arise during this stage, including:

- The data obtained from laboratory testing and clinical trials are susceptible to varying interpretations, which could delay, limit or prevent FDA and other regulatory approvals
- Adverse events could cause the FDA and other regulatory authorities to halt trials
- At any time the FDA and other regulatory agencies could change policies and regulations that could result in delay and perhaps rejection of our products, and
- Even after extensive testing and clinical trials, there is no assurance that regulatory approval will ever be obtained for any of our products.

Commercialization approval stage

We will be required to file a BLA with the FDA in order to obtain regulatory approval for the commercial production and sale of Oxycyte in the United States and similar applications with regulatory authorities in countries where we seek to commercialize Oxycyte. Under FDA guidelines, the FDA may comment upon the acceptability of the applicable application following its submission. After an application is submitted, there is an initial review to be sure that all of the required elements are included in the submission. There can be no assurance that the submission will be accepted for filing or that the FDA may not issue an RTF. If an RTF is issued, there is opportunity for dialogue between the sponsor and the FDA in an effort to resolve all concerns. There can be no assurance that such a dialogue will be successful in leading to the filing of the BLA. If the submission is filed, there can be no assurance that the full review will result in product approval.

Post-commercialization stage

Discovery of previously unknown problems with Oxycyte or another product, or unanticipated problems with our manufacturing arrangements, even after FDA and other regulatory approvals of Oxycyte or another product for commercial sale may result in the imposition of significant restrictions, including withdrawal of the product from the market. Our previous agreement with Hospira was exclusive and as a consequence, delays in supply by Hospira could cause us to be unable to supply our customers' demand. On August 30, 2011, we and Hospira entered into a Termination Agreement pursuant to which we mutually agreed to terminate the supply agreement related to the development, manufacture, supply and distribution of Oxycyte. No early termination penalties or other payments were incurred by either party in connection with the termination.

In September 2011 we entered into a development and supply agreement with NextPharma, Inc. to manufacture our Oxycyte emulsion for clinical use under cGMP standards. In January 2012, NextPharma transferred the manufacturing process from Hospira, our previous supplier, to their cGMP facilities and demonstrated their ability to produce clinical grade Oxycyte.

Additional laws and regulations may also be enacted that could prevent or delay regulatory approval of Oxycyte or our other products, including laws or regulations relating to the price or cost-effectiveness of medical products. Any delay or failure to achieve regulatory approval of commercial sales of our products is likely to have a material adverse effect on our financial condition, results of operations and cash flows.

The FDA and other regulatory agencies continue to review products even after they receive agency approval. If and when the FDA or another regulatory agency outside the United States approves one of our products, its manufacture and marketing will be subject to ongoing regulation, which could include compliance with current good manufacturing practices, adverse event reporting requirements and general prohibitions against promoting products for unapproved or "off-label" uses. We are also subject to inspection and market surveillance by the FDA for compliance with these and other requirements. Any enforcement action resulting from failure, even by inadvertence, to comply with these requirements could affect the manufacture and marketing of Oxycyte or our other products. In addition, the FDA or other regulatory agencies could withdraw a previously approved product from the market upon receipt of newly discovered information. The FDA or another regulatory agency could also require us to conduct additional, and potentially expensive, studies in areas outside our approved indicated uses.

We must continually monitor the safety of our products once approved and marketed for signs that their use may elicit serious and unexpected side effects and adverse events, which could jeopardize our ability to continue marketing the products. We may also be required to conduct post-approval clinical studies as a condition to licensing a product.

As with all pharmaceutical products, the use of our products could sometimes produce undesirable side effects or adverse reactions or events (referred to cumulatively as adverse events). For the most part, we would expect these adverse events to be known and occur at some predicted frequency. When adverse events are reported to us, we will be required to investigate each event and circumstances surrounding it to determine whether it was caused by our product and whether it implies that a previously unrecognized safety issue exists. We will also be required to periodically report summaries of these events to the applicable regulatory authorities.

In addition, the use of our products could be associated with serious and unexpected adverse events, or with less serious reactions at a greater than expected frequency. This may be especially true when our products are used in critically ill or otherwise compromised patient populations. When these unexpected events are reported to us, we will be required to make a thorough investigation to determine causality and implications for product safety. These events must also be specifically reported to the applicable regulatory authorities. If our evaluation concludes, or regulatory authorities perceive, that there is an unreasonable risk associated with the product, we would be obligated to withdraw the impacted lot(s) of that product. Furthermore, an unexpected adverse event of a new product could be recognized only after extensive use of the product, which could expose us to product liability risks, enforcement action by regulatory authorities and damage to our reputation and public image.

A serious adverse finding concerning the risk of Oxycyte by any regulatory authority could adversely affect our reputation, business and financial results.

When a new product is approved, the FDA or other regulatory authorities may require post-approval clinical trials, sometimes called Phase IV clinical trials. If the results of such trials are unfavorable, this could result in the loss of the license to market the product, with a resulting loss of sales.

After our products are commercialized, we expect to spend considerable time and money complying with federal and state laws and regulations governing their sale, and, if we are unable to fully comply with such laws and regulations, we could face substantial penalties.

Health care providers, physicians and others will play a primary role in the recommendation and prescription of our clinical products. Our arrangements with third-party payers and customers may expose us to broadly applicable fraud and abuse and other health care laws and regulations that may constrain the business or financial arrangements and relationships through which we will market, sell and distribute our products. Applicable federal and state health care laws and regulations are expected to include, but not be limited to, the following:

- The federal anti-kickback statute is a criminal statute that makes it a felony for individuals or entities knowingly and willfully to offer or pay, or to solicit or receive, direct or indirect remuneration, in order to induce the purchase, order, lease, or recommending of items or services, or the referral of patients for services, that are reimbursed under a federal health care program, including Medicare and Medicaid;

- The federal False Claims Act imposes liability on any person who knowingly submits, or causes another person or entity to submit, a false claim for payment of government funds. Penalties include three times the government's damages plus civil penalties of $5,500 to $11,000 per false claim. In addition, the False Claims Act permits a person with knowledge of fraud, referred to as a qui tam plaintiff, to file a lawsuit on behalf of the government against the person or business that committed the fraud, and, if the action is successful, the qui tam plaintiff is rewarded with a percentage of the recovery;

- Health Insurance Portability and Accountability Act imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- The Social Security Act contains numerous provisions allowing the imposition of a civil money penalty, a monetary assessment, exclusion from the Medicare and Medicaid programs, or some combination of these penalties; and

- Many states have analogous state laws and regulations, such as state anti-kickback and false claims laws. In some cases, these state laws impose more strict requirements than the federal laws. Some state laws also require pharmaceutical companies to comply with certain price reporting and other compliance requirements.

Our failure to comply with any of these federal and state health care laws and regulations, or health care laws in foreign jurisdictions, could have a material adverse effect on our business, financial condition, result of operations and cash flows.

Health care reform and controls on health care spending may limit the price we can charge for Oxycyte and the amount we can sell.

As a result of legislation signed by President Obama on March 22, 2010, substantial changes are expected to occur in the current system for paying for health care in the United States, including changes made in order to extend medical benefits to those who currently lack insurance coverage. Approximately 47 million Americans currently lack health insurance of any kind. Extending coverage to such a large population could substantially change the structure of the health insurance system and the methodology for reimbursing medical services, drugs and devices. Restructuring the coverage of medical care in the United States could impact the reimbursement for prescribed drugs and biopharmaceuticals, including our products. If reimbursement for these products is limited, or rebate obligations associated with them are substantially increased, our financial condition, results of operations and cash flows could be materially impacted.

Extending medical benefits to those who currently lack coverage will likely result in substantial cost to the federal government, which may force significant changes to the United States health care system. Much of the funding for expanded health care coverage may be sought through cost savings. While some of these savings may come from realizing greater efficiencies in delivering care, improving the effectiveness of preventive care and enhancing the overall quality of care, much of the cost savings may come from reducing the cost of care. Cost of care could be reduced by reducing the level of reimbursement for medical services or products (including those biopharmaceuticals that we intend to produce and market), or by restricting coverage (and, thereby, utilization) of medical services or products. In either case, a reduction in the utilization of, or reimbursement for, our products could have a materially adverse impact on our financial performance.

Uncertainty of third-party reimbursement could affect our future results of operations.

Sales of medical products largely depend on the reimbursement of patients' medical expenses by governmental health care programs and private health insurers. We will be required to report detailed pricing information, net of included discounts, rebates and other concessions, to the Centers for Medicare and Medicaid Services, or CMS, for the purpose of calculating national reimbursement levels, certain federal prices, and certain federal rebate obligations. If we report pricing information that is not accurate to the federal government, we could be subject to fines and other sanctions that could adversely affect our business. In addition, the government could change its calculation of reimbursement, federal prices, or federal rebate obligations which could negatively impact us. There is no guarantee that government health care programs or private health insurers will reimburse our sales of Oxycyte, or permit us to sell our product at high enough prices to generate a profit.

Governments outside the United States tend to impose strict price controls and reimbursement approval policies, which may adversely affect our prospects for generating revenue outside the United States.

In some countries, particularly European Union countries, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time (6 to 12 months or longer) after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries with respect to any product candidate that achieves regulatory approval, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. If reimbursement of our products upon approval, if at all, is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our prospects for generating revenue, if any, could be adversely affected which would have a material adverse effect on our business and results of operations. Further, if we achieve regulatory approval of any product, we must successfully negotiate product pricing for such product in individual countries. As a result, the pricing of our products, if approved, in different countries may vary widely, thus creating the potential for third-party trade in our products in an attempt to exploit price differences between countries. This third-party trade of our products could undermine our sales in markets with higher prices.

Risks Relating to Our Dependence on Third Parties

We depend on third parties to manufacture our products.

We do not own or operate any manufacturing facilities for the commercial-scale production of Oxycyte. Instead, we rely on third party manufacturers. NextPharma currently manufacturers Oxycyte for us, and Fluoromed currently produces FtBu for us. In the past we have used PrimaPharm and Hospira for the manufacture of Oxycyte. In order to seek regulatory approval of the sale of Oxycyte produced at the NextPharma manufacturing facility and because of the level of inventory produced by PrimaPharm and Hospira in the past, we may be required to conduct a portion of our clinical trials with product manufactured at the NextPharma facility. Accordingly, a delay in achieving scale-up of commercial manufacturing capabilities when needed will have a material adverse effect on sales of our products. Additionally, the manufacture of our products will be subject to extensive government regulation. Among the conditions for marketing approval is that our quality control and manufacturing procedures conform to applicable good manufacturing practice regulations. There is a risk that we will not be able to obtain the necessary regulatory clearances or approvals to manufacture our products on a timely basis or at all.

If NextPharma or Fluoromed are unable to supply Oxycyte or FtBu, respectively, to use in the quantities needed, we may be unable to conclude agreements with a replacement manufacturer on favorable terms, if at all, and may be delayed in identifying and qualifying such replacement. In any event, identifying and qualifying new third-party manufacturers could involve significant costs associated with the transfer of the active pharmaceutical ingredient or finished product manufacturing process. A change in manufacturer likely would require formal approval by the FDA or other regulatory agencies before the new manufacturer could produce commercial supplies of our products. This approval process would likely take at least 12 to 18 months and, during that time, we could face a shortage of supply of our products, which could negatively affect our financial condition, results of operations and cash flows.

The manufacturing process for Oxycyte is complicated and time consuming, and may experience problems that would limit our ability to manufacture and sell our products.

Our products require product manufacturing steps that are complicated, time consuming and costly. Minor deviations in the manufacturing processes or other problems could result in unacceptable changes in the products that result in lot failures, increased production scrap, shipment delays, regulatory problems, product recalls or product liability, all of which could negatively affect our financial condition, the results of our operations and cash flows.

We depend on the services of a limited number of key personnel.

Our success is highly dependent on the continued services of a limited number of scientists and support personnel. The loss of any of these individuals could have a material adverse effect on us. In addition, our success will depend, among other factors, on the recruitment and retention of additional highly skilled and experienced management and technical personnel. There is a risk that we will not be able to retain existing employees or to attract and retain additional skilled personnel on acceptable terms given the competition for such personnel among numerous large and well-funded pharmaceutical and health care companies, universities, and non-profit research institutions, which could negatively affect our financial condition, results of operations and cash flows. Since August 24, 2011, Michael B. Jebsen has served as both our Chief Financial Officer and our interim Chief Executive Officer. While we continue to search for a permanent Chief Executive Officer, we can give no assurances as to when, or if, we will locate a suitable candidate, and we may be adversely affected if we are unable to identify a qualified permanent Chief Executive Officer in a timely manner.

We have limited experience in the sale and marketing of cosmetics and medical products.

We have limited experience in the sale and marketing of cosmetics and approved medical products and marketing the licensing of such products before FDA or other regulatory approval. We have not decided upon a commercialization strategy in these areas. We do not know of any third party that is prepared to distribute Oxycyte should it be approved. If we decide to establish our own commercialization capability, we will need to recruit, train and retain a marketing staff and sales force with sufficient technical expertise. We do not know whether we can establish a commercialization program at a cost that is acceptable in relation to revenue or whether we can be successful in commercializing our product. Factors that may inhibit our efforts to commercialize our products directly and without strategic partners include:

- Our inability to recruit and retain adequate numbers of effective sales and marketing personnel;

- The inability of sales personnel to obtain access to or persuade adequate numbers of physicians to prescribe our products;

- The lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines; and

- Unforeseen costs and expenses associated with creating and sustaining an independent sales and marketing organization.

Failure to successfully commercialize Dermacyte and Oxycyte or to do so on a cost effective basis would likely result in failure of our business.

We may enter into distribution arrangements and marketing alliances for certain products and any failure to successfully identify and implement these arrangements on favorable terms, if at all, may impair our ability to commercialize our product candidates.

We do not anticipate having the resources in the foreseeable future to develop global sales and marketing capabilities for all of the products we develop, if any. We may pursue arrangements regarding the sales and marketing and distribution of one or more of our product candidates and our future revenues may depend, in part, on our ability to enter into and maintain arrangements with other companies having sales, marketing and distribution capabilities and the ability of such companies to successfully market and sell any such products. Any failure to enter into such arrangements and marketing alliances on favorable terms, if at all, could delay or impair our ability to commercialize our product candidates and could increase our costs of commercialization. Any use of distribution arrangements and marketing alliances to commercialize our product candidates will subject us to a number of risks, including the following:

- We may be required to relinquish important rights to our products or product candidates;
- We may not be able to control the amount and timing of resources that our distributors or collaborators may devote to the commercialization of our product candidates;
- Our distributors or collaborators may experience financial difficulties;
- Our distributors or collaborators may not devote sufficient time to the marketing and sales of our products; and
- Business combinations or significant changes in a collaborator's business strategy may adversely affect a collaborator's willingness or ability to complete its obligations under any arrangement.

We may need to enter into additional co-promotion arrangements with third parties where our own sales force is neither well situated nor large enough to achieve maximum penetration in the market. We may not be successful in entering into any co-promotion arrangements, and the terms of any co-promotion arrangements we enter into may not be favorable to us.

Risks Relating to Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates and the methods used to manufacture them, as well as successfully defending these patents against third-party challenges. Our ability to stop third parties from making, using, selling, offering to sell or importing our products is dependent upon the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities.

We license certain intellectual property from third parties that covers our product candidates. We rely on certain of these third parties to file, prosecute and maintain patent applications and otherwise protect the intellectual property to which we have a license, and we have not had and do not have primary control over these activities for certain of these patents or patent applications and other intellectual property rights. We cannot be certain that such activities by third parties have been or will be conducted in compliance with applicable laws and regulations or will result in valid and enforceable patents and other intellectual property rights. Our enforcement of certain of these licensed patents or defense of any claims asserting the invalidity of these patents would also be subject to the cooperation of the third parties.

The patent positions of pharmaceutical and biopharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in biopharmaceutical patents has emerged to date in the United States. The biopharmaceutical patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in the patents we own or to which we have a license from a third-party. Further, if any of our patents are deemed invalid and unenforceable, it could impact our ability to commercialize or license our technology.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to make compositions or formulations that are similar to our product candidates but that are not covered by the claims of our patents;
- we might not have been the first to make the inventions covered by our issued patents or pending patent applications;
- we might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies;
- it is possible that our pending patent applications will not result in issued patents;
- our issued patents may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges by third parties;
- we may not develop additional proprietary technologies that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

We rely on confidentiality agreements that, if breached, may be difficult to enforce and could have a material adverse effect on our business and competitive position.

Our policy is to enter agreements relating to the non-disclosure and non-use of confidential information with third parties, including our contractors, consultants, advisors and research collaborators, as well as agreements that purport to require the disclosure and assignment to us of the rights to the ideas, developments, discoveries and inventions of our employees and consultants while we employ them. However, these agreements can be difficult and costly to enforce. Moreover, to the extent that our contractors, consultants, advisors and research collaborators apply or independently develop intellectual property in connection with any of our projects, disputes may arise as to the proprietary rights to the intellectual property. If a dispute arises, a court may determine that the right belongs to a third party, and enforcement of our rights can be costly and unpredictable. In addition, we rely on trade secrets and proprietary know-how that we seek to protect in part by confidentiality agreements with our employees, contractors, consultants, advisors or others. Despite the protective measures we employ, we still face the risk that:

- These agreements may be breached;
- These agreements may not provide adequate remedies for the applicable type of breach; or
- Our trade secrets or proprietary know-how will otherwise become known.

Any breach of our confidentiality agreements or our failure to effectively enforce such agreements would have a material adverse effect on our business and competitive position.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or use, our technology.

If we or our partners choose to go to court to stop someone else from using the inventions claimed in our patents, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that such other party's activities do not infringe our rights to these patents.

Furthermore, a third party may claim that we or our manufacturing or commercialization partners are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we or our commercialization partners are infringing the third party's patents and would order us or our partners to stop the activities covered by the patents. In addition, there is a risk that a court will order us or our partners to pay the other party damages for having violated the other party's patents. We have agreed to indemnify certain of our commercial partners against certain patent infringement claims brought by third parties. The biotechnology industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods of use either do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid, and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, because patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after filing and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our issued patents or our pending applications, or that we were the first to invent the technology. Our competitors may have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications or patents, which could further require us to obtain rights to issued patents by others covering such technologies. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the U.S. Patent and Trademark Office to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful if, unbeknownst to us, the other party had independently arrived at the same or similar invention prior to our own invention, resulting in a loss of our U.S. patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

Our collaborations with outside scientists and consultants may be subject to restriction and change.

We work with chemists, biologists and other scientists at academic and other institutions, and consultants who assist us in our research, development, regulatory and commercial efforts, including the members of our scientific advisory board. These scientists and consultants have provided, and we expect that they will continue to provide, valuable advice on our programs. These scientists and consultants are not our employees, may have other commitments that would limit their future availability to us and typically will not enter into non-compete agreements with us. If a conflict of interest arises between their work for us and their work for another entity, we may lose their services. In addition, we will be unable to prevent them from establishing competing businesses or developing competing products. For example, if a key scientist acting as a principal investigator in any of our clinical trials identifies a potential product or compound that is more scientifically interesting to his or her professional interests, his or her availability to remain involved in our clinical trials could be restricted or eliminated.

Under current law, we may not be able to enforce all employees' covenants not to compete and therefore may be unable to prevent our competitors from benefiting from the expertise of some of our former employees.

We have entered into non-competition agreements with certain of our employees. These agreements prohibit our employees, if they cease working for us, from competing directly with us or working for our competitors for a limited period. Under current law, we may be unable to enforce these agreements against certain of our employees and it may be difficult for us to restrict our competitors from gaining the expertise our former employees gained while working for us. If we cannot enforce our employees' non-compete agreements, we may be unable to prevent our competitors from benefiting from the expertise of our former employees.

We may infringe or be alleged to infringe intellectual property rights of third parties.

Our products or product candidates may infringe on, or be accused of infringing on, one or more claims of an issued patent or may fall within the scope of one or more claims in a published patent application that may be subsequently issued and to which we do not hold a license or other rights. Third parties may own or control these patents or patent applications in the United States and abroad. These third parties could bring claims against us or our collaborators that would cause us to incur substantial expenses and, if successful against us, could cause us to pay substantial damages. Further, if a patent infringement suit were brought against us or our collaborators, we or they could be forced to stop or delay research, development, manufacturing or sales of the product or product candidate that is the subject of the suit.

If we are found to infringe the patent rights of a third party, or in order to avoid potential claims, we or our collaborators may choose or be required to seek a license from a third party and be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we or our collaborators were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or be forced to cease some aspect of our business operations, if, as a result of actual or threatened patent infringement claims, we or our collaborators are unable to enter into licenses on acceptable terms.

There have been substantial litigation and other proceedings regarding patent and other intellectual property rights in the pharmaceutical and biotechnology industries. In addition to infringement claims against us, we may become a party to other patent litigation and other proceedings, including interference proceedings declared by the United States Patent and Trademark Office and opposition proceedings in the European Patent Office, regarding intellectual property rights with respect to our products. Our products, after commercial launch, may become subject to Paragraph IV certification under the Hatch-Waxman Act, thus forcing us to initiate infringement proceedings against such third-party filers. The cost to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their substantially greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time.

Many of our employees were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. We try to ensure that our employees do not use the proprietary information or know-how of others in their work for us. We may, however, be subject to claims that we or these employees have inadvertently or otherwise used or disclosed intellectual property, trade secrets or other proprietary information of any such employee's former employer. Litigation may be necessary to defend against these claims and, even if we are successful in defending ourselves, could result in substantial costs to us or be distracting to our management. If we fail to defend any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel.

Product liability lawsuits against us could cause us to incur substantial liabilities, limit sales of our existing products and limit commercialization of any products that we may develop.

Our business exposes us to the risk of product liability claims that are inherent in the manufacturing, distribution, and sale of biotechnology products. We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical trials and an even greater risk when we commercially sell any products. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we could incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- Decreased demand for our products and any product candidates that we may develop;

- Injury to our reputation;

- Withdrawal of clinical trial participants;

- Costs to defend the related litigation;

- Substantial monetary awards to trial participants or patients;

- Loss of revenue; and

- The inability to commercialize any products that we may develop.

We currently maintain limited product liability insurance coverage for our clinical trials in the total amount of $3 million. However, our profitability will be adversely affected by a successful product liability claim in excess of our insurance coverage. There can be no assurance that product liability insurance will be available in the future or be available on reasonable terms.

Risks Related to Owning Our Common Stock

The redemption by us of Convertible Preferred Stock in stock or the conversion of such Preferred Stock by the holders could result in a substantial number of additional shares being issued, with the number of such shares increasing if and to the extent our market price declines, diluting the ownership percentage of our existing stockholders.

The Preferred Stock is convertible at the option of the holders at an initial conversion price of $2.22. We will make amortization and dividend payments on the Preferred Stock, with the principal amount of the first closing being amortized in six payments payable over the six months following the issue date of the Preferred Stock, and the principal amount of the additional closings being amortized in equal payments of 667 shares of Preferred Stock per month, payable at our option in cash and/or stock, subject to certain conditions being met. If we elect to make the payments in shares of our common stock, the price used to determine the number of shares to be issued will be calculated using the lesser of (i) the-then existing conversion price, which is initially $2.22 per share and (ii) a 10% discount to a calculated market price. Accordingly, the lower the market price of our common stock at the time at which we make amortization payments in stock, the greater the number of shares we will be obliged to issue and the greater the dilution to our existing stockholders. Such issuances could adversely affect the market price of our common stock.

Our share price has been volatile and may continue to be volatile which may subject us to securities class action litigation in the future.

The market price of shares of our common stock has been, and may be in the future, subject to wide fluctuations in response to many risk factors listed in this section, and others beyond our control, including:

- actual or anticipated fluctuations in our financial condition and operating results;

- status and/or results of our clinical trials;

- status of ongoing litigation;

- results of clinical trials of our competitors' products;

- regulatory actions with respect to our products or our competitors' products;
- actions and decisions by our collaborators or partners;
- actual or anticipated changes in our growth rate relative to our competitors;
- actual or anticipated fluctuations in our competitors' operating results or changes in their growth rate;
- competition from existing products or new products that may emerge;
- issuance of new or updated research or reports by securities analysts;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- market conditions for biopharmaceutical stocks in general;
- status of our search and selection of future management and leadership; and
- general economic and market conditions.

On April 30, 2012 the closing price of our common stock was $1.78 as compared with $1.77 as of April 30, 2011. During the twelve months ended April 30, 2012, the lowest closing price of our common stock was $1.34 and the highest closing price was $3.04.

Some companies that have had volatile market prices for their securities have had securities class action lawsuits filed against them. Such lawsuits, should they be filed against us in the future, could result in substantial costs and a diversion of management's attention and resources. This could have a material adverse effect on our business, results of operations and financial condition.

We are likely to attempt to raise additional capital through issuances of debt or equity securities, which may cause our stock price to decline, dilute the ownership interests of our existing stockholders, and/or limit our financial flexibility.

Historically we have financed our operations through the issuance of equity securities and debt financings, and we expect to continue to do so for the foreseeable future. As of July 20, 2012, we believe we have sufficient capital on hand to continue to fund operations through December 31, 2012. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience significant dilution of their ownership interests. Debt financing, if available, may involve restrictive covenants that limit our financial flexibility or otherwise restrict our ability to pursue our business strategies. Additionally, if we issue shares of common stock, or securities convertible or exchangeable for common stock, the market price of our existing common stock may decline. There can be no assurance that we will be successful in obtaining any additional capital resources in a timely manner, on favorable terms, or at all.

We have issued in the past, and may issue in the future, substantial amounts of instruments that are convertible into or exercisable for common stock, and our existing stockholders may face substantial dilution if such instruments are converted or exercised.

As of July 20, 2012, we had outstanding convertible notes, warrants, options, securities purchase agreements, and other instruments that are convertible or exercisable into an aggregate of approximately 9,601,288 shares of our common stock, which, if converted or exercised, would represent approximately 31% of our current outstanding common stock. These instruments carry a wide variety of different terms and prices, and there can be no assurance as to when or whether conversions or exercises of these instruments may occur. If all or any substantial portion of these instruments are converted or exercised, our existing stockholders may face substantial dilution of their ownership interests.

Certain investors may be able to exercise significant influence over us.

As of July 20, 2012, SPC 1 Vatea Segregated Portfolio, or Vatea Fund, held 3,781,607 shares of our common stock, representing 12 % of our outstanding common stock. As of July 20, 2012, JP SPC 3 obo OXBT FUND, SP, or OXBT Fund, held notes and warrants that are convertible or exercisable into an aggregate of up to 4,079,825 shares of our common stock, which, if converted or exercised, would represent 13% of our current outstanding common stock. Mr. Gregory Pepin, one of our directors, is the investment manager of both Vatea Fund and OXBT Fund. Accordingly, these parties, either individually or as part of a group, may have a strong ability to influence our business, policies and affairs. We cannot be certain that their interests will be consistent with the interests of other holders of our common stock.

Risks Relating to Employee Matters and Managing Growth

We may need to increase the size of our company, and we may experience difficulties in managing growth.

As of April 30, 2012, we had 15 full-time employees. We may need to expand our managerial, operational, administrative, financial and other resources in order to manage and fund our operations and clinical trials, continue our development activities and commercialize our product candidates. To support this growth, we may hire additional employees within the next 12 months. Our management, personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively manage our operations, growth and various projects requires that we continue to improve our operational, financial and management controls, reporting systems and procedures.

We may not be able to attract or retain qualified management and scientific personnel in the future. If we are unable to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede our achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy.

In addition, we have scientific and clinical advisors who assist us in our product development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us, or may have arrangements with other companies to assist in the development of products that may compete with ours. Because our business depends on certain key personnel and advisors, the loss of such personnel and advisors could weaken our management team and we may experience difficulty in attracting and retaining qualified personnel and advisors.

ITEM 1B—UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2—PROPERTIES

We own no real property. We lease our principal executive office at ONE Copley Parkway, Suite 490, Morrisville, North Carolina 27560 and our principal laboratory facilities at 3189 Airway Avenue, Building C, Costa Mesa, California 92626. The current rent is approximately $23,032 per month for both facilities.

ITEM 3—LEGAL PROCEEDINGS

The Company is subject to litigation in the normal course of business, none of which management believes will have a material adverse effect on the Company's financial statements.

On August 30, 2011, Tenor Opportunity Master Fund Ltd., Aria Opportunity Fund, Ltd., and Parsoon Opportunity Fund, Ltd (collectively, “Tenor”) filed a lawsuit in the United States District Court for the Southern District of New York alleging that a right of first offer held by Tenor was breached in connection with the Company's June 2011 financing. The complaint seeks compensatory damages, attorneys’ fees and costs. Discovery has been completed and motions for summary judgment from both sides were filed. Plaintiffs filed on the matter of breach and we filed on the matter of damages. On July 11, 2012 the court entered an order on both summary judgment motions. The court found in favor of Plaintiff's motion, holding that we did breach the agreement. The court did not find in favor of our motion regarding damages. The matter will now move to trial for a jury to determine what, if any, damages Plaintiff's suffered from our breach of the agreement.

ITEM 4— MINE SAFETY DISCLOSURES

Not applicable

PART II

ITEM 5—MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Price and Number of Stockholders

Our common stock is listed on the NASDAQ Capital Market under the symbol "OXBT." The following table sets forth, for the past two fiscal years, the range of high and low sales prices in each fiscal quarter for our common stock .

Year-Ended April 30, 2011	**High**	**Low**
First Quarter	$ 5.01	$ 2.39
Second Quarter	$ 3.33	$ 1.88
Third Quarter	$ 2.75	$ 1.87
Fourth Quarter	$ 2.22	$ 1.70

Year-Ended April 30, 2012	**High**	**Low**
First Quarter	$ 3.55	$ 1.71
Second Quarter	$ 3.08	$ 1.85
Third Quarter	$ 2.36	$ 1.30
Fourth Quarter	$ 3.20	$ 1.78

As of July 20, 2012, there were 1,357 holders of record of our common stock. In addition, we believe that a significant number of beneficial owners of our common stock hold their shares in nominee or in "street name" accounts through brokers. On July 20, 2012, the last sale price reported on the NASDAQ Capital Market for our common stock was $1.31 per share.

Dividend Policy

Since our inception we have not paid dividends on our common stock. We intend to retain any earnings for use in our business activities, so it is not expected that any dividends on our common stock will be declared and paid in the foreseeable future.

Repurchases of Common Stock

The following table lists all repurchases during the fourth quarter of fiscal 2012 of any of our securities registered under Section 12 of the Exchange Act by or on behalf of us or any affiliated purchaser.

Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share (2)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
February 1, 2012 – February 29, 2012	438	$ 2.00	-	-
March 1, 2012 – March 31, 2012	438	2.69	-	-
April 1, 2012 – April 30, 2012	436	2.35	-	-
Total	1,312	$ 2.35	-	-

(1) Represents shares repurchased in connection with tax withholding obligations under the 1999 Amended Stock Plan.

(2) Represents the average price paid per share for the shares repurchased in connection with tax withholding obligations under the 1999 Amended Stock Plan.

Unregistered Sales of Equity Securities

During the fiscal quarter ended April 30, 2012, we issued 243,830 shares of unregistered common stock as payment of $549,833 of interest due on our outstanding Convertible Notes.

All of the securities described above were issued in reliance on the exemption from registration set forth in Section 4(2) of the Securities Act of 1933.

ITEM 6—SELECTED FINANCIAL DATA

Not Applicable.

ITEM 7—MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis together with the financial statements and the related notes to those statements included in "Item 8 – Financial Statements and Supplementary Data." This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" and elsewhere in this Annual Report on Form 10-K, our actual results may differ materially from those anticipated in these forward-looking statements.

Results of operations- Comparison of the year ended April 30, 2012 and 2011

The following table sets forth our condensed statement of operations data and presentation of that data as amount of change from period-to-period.

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Wholesale & retail revenue	$ 74,519	$ 101,582	$ (27,063)	(27) %
Distibutor revenue	26,000	220,767	(194,767)	(88) %
Product revenue	100,519	322,349	(221,830)	(69) %
Cost of sales	51,253	219,182	(167,929)	(77) %
Gross profit	49,266	103,167	(53,901)	(52) %
Government grant revenue	314,515	-	314,515	— %
Total net revenue	363,781	103,167	260,614	253 %
Operating expenses:				
Sales and Marketing	393,922	926,411	(532,489)	(57) %
General and administrative	5,697,884	6,755,676	(1,057,792)	(16) %
Research and development	2,462,638	2,681,713	(219,075)	(8) %
Loss on impairment of long-lived assets	29,534	302,044	(272,510)	(90) %
Total Operating expenses	8,583,978	10,665,844	(2,081,866)	(20) %
Net operating loss	8,220,197	10,562,677	(2,342,480)	(22) %
Interest expense	7,412,054	171,563	7,240,491	4,220%
Other expense (income)	80,159	(285,944)	366,103	(128) %
Net loss	$ 15,712,410	$ 10,448,296	$ 5,264,114	50 %

Revenue

Product Revenue and Gross Profit

We generate revenue through the sale of Dermacyte through on-line retailers, physician and medical spa facilities, and through distribution agreements with unrelated companies. Product revenue and percentage changes for the years ended April 30, 2012 and 2011, respectively, are as follows:

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Wholesale & retail revenue	$ 74,519	$ 101,582	$ (27,063)	(27)%
Distibutor revenue	26,000	220,767	(194,767)	(88)%
Product revenue	100,519	322,349	(221,830)	(69)%
Cost of sales	51,253	219,182	(167,929)	(77)%
Gross profit	49,266	103,167	(53,901)	(52)%

Product revenue decreased approximately $222,000 for the year ended April 30, 2012 compared to the prior year. During the year ended April 30, 2012, we suspended our existing marketing program and focused our efforts on reformulating and repackaging our existing retail products.

Gross profit as a percentage of revenue was 49% and 32% for the years ended April 30, 2012 and 2011, respectively. The increase for the year ended April 30, 2012 was due to a greater proportion of total sales through wholesale and retail channels versus sales through distributors in the current year.

Government Grant Revenue

We earn revenues through a cost-reimbursement grant sponsored by the United States Army, or Grant Revenue. Grant Revenue is recognized as milestones under the Grant program are achieved. Grant Revenue is earned through reimbursements for the direct costs of labor, travel, and supplies, as well as the pass-through costs of subcontracts with third-party CROs.

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Government grant revenue	$ 314,515	$ -	$ 314,515	—%

For the year ended April 30, 2012, we recorded approximately $315,000 in revenue under the grant program. In addition to the revenue earned, we have recorded approximately $244,013 in deferred revenue associated with the grant. Deferred revenue under the grant represents pass-through costs that have been reimbursed in advance of performing the studies underlying the subcontracts.

Marketing and Sales Expenses

Marketing and sales expenses consisted primarily of personnel-related costs, including salaries commissions, and the costs of marketing programs aimed at increasing revenue, such as advertising, trade shows, public relations and other market development programs. Marketing and sales expenses and percentage changes for the years ended April 30, 2012 and 2011, respectively, are as follows:

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Marketing and sales expense	$ 393,922	$ 926,411	$ (532,489)	(57) %

The decrease in marketing and sales expenses for the year ended April 30, 2012 compared to the prior year were driven primarily by our decision to suspend our existing marketing program and focus our efforts on reformulating and repackaging our existing retail products.

Costs incurred for direct marketing and advertising were approximately $138,000 and $515,000 during the years ended April 30, 2012 and 2011, respectively. These costs include attendance at trade shows and conferences, fees paid to a third party public relations firm, the costs of product samples distributed to potential customers, and the costs of direct print and online advertisements. The $377,000 reduction in costs during the current year was primarily due to our decision to focus our sales and marketing efforts to specific regions and eliminate nationwide print advertising, consulting firms, and trade shows.

Costs incurred for compensation were approximately $213,000 and $320,000 during the years ended April 30, 2012 and 2011, respectively. The $107,000 reduction in costs during the current year was due to the elimination of 3 full-time marketing and sales positions.

Costs incurred for travel were approximately $43,000 and $91,000 during the years ended April 30, 2012 and 2011, respectively. The $48,000 reduction in costs during the current year was directly correlated to the reduction in personnel described above.

General and Administrative Expenses

General and administrative expenses consist primarily of compensation for executive, finance, legal and administrative personnel, including stock-based compensation. Other general and administrative expenses include facility costs not otherwise included in research and development expenses, legal and accounting services, other professional services, and consulting fees.

The following table sets forth the components of general and administrative costs, and percentage changes, for the years ended April 30, 2012 and 2011, respectively.

	Year ended April 30,		Increase/	%
	2012	2011	(Decrease)	Increase/
Personnel costs	$ 1,747,055	$ 3,358,590	$ (1,611,535)	(48) %
Legal and professional fees	3,086,350	2,149,046	937,304	44 %
Facilities	284,694	330,078	(45,384)	(14) %
Other costs	414,204	658,918	(244,714)	(37) %
Depreciation and amortization	165,581	259,044	(93,463)	(36) %

Personnel costs:

Personnel costs decreased approximately $1,611,000 for the year ended April 30, 2012 compared to the prior year. The decrease was due primarily to the elimination of three executive positions during the current fiscal year and the accrual for the contingent liability from potential 409A expenses recorded in the prior year.

Legal and professional fees:

Legal and professional fees increased approximately $937,000 for the year ended April 30, 2012 compared to the prior year. This increase was primarily due to increases of $980,000 and $121,000 in legal and accounting fees and consulting fees, respectively; partially offset by a decrease of $157,000 in investor relations costs. The increase in legal and accounting costs was primarily related to the closing of the Series A Convertible Preferred Stock offering in December 2011 and the costs to defend the Tenor matter. The increase in consulting fees was primarily related to Board of Director recruiting fees. The decrease in investor relations costs was the result of terminating existing agreements with Swiss-based public relations firms and the decision to delist from the SIX exchange.

Facilities:

Facilities include costs paid for rent and utilities at our corporate headquarters in North Carolina. The $45,000 reduction during the year ended April 30, 2012 compared to the prior year was the result of our relocation from Durham, NC to Morrisville, NC in March 2011.

Other costs:

Other costs include costs incurred for travel, supplies, insurance and other miscellaneous charges. The $245,000 reduction in other costs was due primarily to a $250,000 reduction in administrative travel costs partially offset by increases in insurance premiums and taxes paid.

Depreciation and Amortization:

The $93,000 decrease in depreciation and amortization costs for the year ended April 30, 2012 compared to the prior year was primarily due to the impairment charges of approximately $302,000 recorded against the carrying value of certain patents in the prior year; partially offset by increased depreciation costs on fixed assets placed in service during the current year.

Research and Development Expenses

Research and development expenses include, but are not limited to, (i) expenses incurred under agreements with CROs and investigative sites, which conduct our clinical trials and a substantial portion of our preclinical studies; (ii) the cost of manufacturing and supplying clinical trial materials; (iii) payments to contract service organizations, as well as consultants; (iv) employee-related expenses, which include salaries and benefits; and (v) facilities, depreciation and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities and equipment, depreciation of leasehold improvements, equipment, laboratory and other supplies. All research and development expenses are expensed as incurred. Research and development expenses and percentage changes for the years ended April 30, 2012 and 2011, are as follows:

The following table sets forth the components of research and development costs, and percentage changes, for the years ended April 30, 2012 and 2011, respectively.

	Year ended April 30,		Increase/	%
	2012	2011	(Decrease)	Increase/
Personnel costs	$ 947,374	$ 883,018	$ 64,356	7%
Consulting	382,374	154,882	227,492	147%
Clinical and preclinical development	814,646	1,301,584	(486,938)	(37) %
Facilities	181,248	157,611	23,637	15%
Other costs	95,900	132,636	(36,736)	(28) %
Depreciation	41,096	51,982	(10,886)	(21) %

Personnel costs:

Personnel costs increased approximately $64,000 for the year ended April 30, 2012 compared to the prior year primarily due to the addition of two chemists and a project manager in the California lab facility.

Consulting fees:

Consulting fees increased approximately $227,000 for the year ended April 30, 2012 compared to the prior year primarily due to the consulting and separation agreement for our former President and COO.

Clinical and preclinical development:

The decrease of approximately $487,000 in clinical and preclinical development costs for the year ended April 30, 2012 compared to the prior year was primarily due to a decrease of $756,000 is costs associated with the Phase II-b trials; partially offset by increases of $190,000 and $75,000 in development costs incurred for Oxycyte and Dermacyte, respectively.

Facilities:

The increase of approximately $24,000 in facilities costs for the year ended April 30, 2012 compared to the prior year was primarily due to costs incurred for repairs and maintenance on Oxycyte manufacturing equipment.

Other costs:

The decrease of approximately $37,000 in other costs for the year ended April 30, 2012 compared to the prior year was primarily due to a $47,000 reduction in travel and conference fees; partially offset by an increase in lab supplies costs.

Depreciation:

Depreciation expense remained relatively consistent for the years ended April 30, 2012 and 2011.

Conducting a significant amount of research and development is central to our business model. Product candidates in later-stage clinical development generally have higher development costs than those in earlier stages of development, primarily due to the significantly increased size and duration of clinical trials. We plan to incur substantial research and development expenses for the foreseeable future in order to complete development of our most advanced product candidate, Oxycyte, and to conduct earlier-stage research and development on our topical applications.

The process of conducting preclinical studies and clinical trials necessary to obtain FDA approval is costly and time consuming. The probability of success for each product candidate and clinical trial may be affected by a variety of factors, including, among other things, the quality of the product candidate's early clinical data, investment in the program, competition, manufacturing capabilities and commercial viability. As a result of the uncertainties discussed above, uncertainty associated with clinical trial enrollment and risks inherent in the development process, we are unable to determine the duration and completion costs of current or future clinical stages of our product candidates or when, or to what extent, we will generate revenues from the commercialization and sale of any of our product candidates. Development timelines, probability of success and development costs vary widely. We are currently focused on developing our most advanced product candidate, Oxycyte, and our topical dermatologic indications; however, we will need substantial additional capital in the future in order to complete the development and potential commercialization of Oxycyte and other product candidates.

Other income and expense

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Other expense (income), net	$ 80,159	$ (285,944)	$ 366,103	-%

During the year ended April 30, 2012, Other expense (income) increased approximately $366,000 compared to the prior year. The increase in Other expense (income) was primarily due to a decrease in other income of approximately $278,000 and an increase in Other expense of approximately $88,000.

Other income:

Other income was decreased approximately $278,000 for the year ended April 30, 2012. This decrease was primarily due to the $244,000 award received in the prior year under the Patient Protection and Affordable Care Act of 2010 (the "PPACA") as well as a reduction of $34,000 in sublease revenue during the current year.

Other expense:

Other expense increased approximately $88,000 for the year ended April 30, 2012. This increase was primarily due to our write-off of an uncollectible receivable of approximately $93,000 for reimbursable patent costs related to our terminated license agreement with Glucometrics, Inc. partially offset by a reduction in foreign currency losses.

Interest expense

	Year ended April 30,		Increase/	% Increase/
	2012	2011	(Decrease)	(Decrease)
Interest expense	$ 7,412,054	$ 171,563	$ 7,240,491	4220%

During the year ended April 30, 2012, interest expense increased approximately $7.2 million compared to the same period in the prior year.

Long-term notes payable:

Interest expense for our long-term notes payable was approximately $2.8 million and $163,000 for the years ended April 30, 2012 and 2011, respectively. The increase in interest expense for the current year was primarily due to recognition of approximately $2.4 million in unaccreted interest due upon prepayment of the notes in November 2011.

Convertible notes payable:

Interest expense on our outstanding convertible notes was approximately $2.1 million for the year ended April 30, 2012. The recorded interest was comprised of $620,915 for quarterly interest payable, approximately $1.4 million in amortization of debt discounts and $107,180 in amortization of debt issue costs. No convertible notes were outstanding in the year ended April 30, 2011.

Series A Convertible Preferred Stock:

Interest expense on our outstanding Preferred Stock was approximately $2.4 million for the year ended April 30, 2012. The recorded interest was comprised of approximately $1.2 million for the calculated fair value of the warrants issued with the Preferred Stock, $530,942 for the excess of the fair-value of the shares issued upon conversion over the fair value of the Preferred Stock and $678,672 for the fair value adjustment to the remaining Preferred Stock outstanding at April 30, 2012. No Preferred Stock was outstanding in the year ended April 30, 2011.

Preferred Stock Dividends:

Interest expense recorded for the payment of dividends on the Preferred Stock was approximately $103,369 for the year ended April 30, 2012. No Preferred Stock was outstanding in the year ended April 30, 2011.

Liquidity, capital resources and plan of operation

We have incurred losses since our inception and as of April 30, 2012 we had an accumulated deficit of approximately $108 million. We will continue to incur losses until we generate sufficient revenue to offset our expenses, and we anticipate that we will continue to incur net losses for at least the next several years. We expect to incur increased expenses related to our development and potential commercialization of Oxycyte and other product candidates and, as a result, we will need to generate significant net product sales, royalty and other revenues to achieve profitability.

Liquidity

We have financed our operations since September 1990 through the issuance of debt and equity securities and loans from stockholders. We had $2,631,032 and $1,632,211of total current assets and working capital of $(495,838) and $(551,033) as of April 30, 2012 and April 30, 2011, respectively. Our practice is to invest excess cash, where available, in short-term money market investment instruments.

Based on our working capital at April 30, 2012 and funds received from the June 2012 Preferred Stock closing, we believe we have sufficient capital on hand to continue to fund operations through December 31, 2012.

Clinical and Preclinical Product Development

We are in the preclinical and clinical trial stages in the development of our product candidates. We are currently conducting Phase II-b clinical trials for the use of Oxycyte in the treatment of severe traumatic brain injury. Even if we are successful with our Phase II-b study, we must then conduct a Phase III clinical study and, if that is successful, file with the FDA and obtain approval of a Biologics License Application to begin commercial distribution, all of which will take more time and funding to complete. Our other product candidates must undergo further development and testing prior to submission to the FDA for approval to initiate clinical trials, which also requires additional funding. Management is actively pursuing private and institutional financing, as well as strategic alliances and/or joint venture agreements to obtain the necessary additional financing and reduce the cost burden related to the development and commercialization of our products though we can give no assurance that any such initiative will be successful. We expect our primary focus will be on funding the continued testing of Oxycyte, since this product is the furthest along in the regulatory review process. Our ability to continue to pursue testing and development of our products beyond December 31, 2012 depends on obtaining license income or outside financial resources. There is no assurance that we will obtain any license agreement or outside financing or that we will otherwise succeed in obtaining the necessary resources.

Convertible Note Offering

On June 29, 2011 and July 1, 2011we closed a convertible note offering pursuant to which we sold to certain investors, including JP SPC 3 obo OXBT FUND, SP, notes convertible into 2,172,949 shares of common stock at $2.255 per share and warrants to purchase 724,317 shares of common stock with an exercise price of $2.15 per share, warrants to purchase 724,316 shares of common stock with an exercise price of $2.60 per share, and warrants to purchase 724,316 shares of common stock with an exercise price of $2.85 per share. The financing provided approximately $4.5 million in net proceeds to us after deducting the placement agent fee and offering expenses.

Series A Convertible Preferred Stock Offering

On December 8, 2011, we entered into a Securities Purchase Agreement with certain institutional investors, consisting of an aggregate $7.5 million of Preferred Stock and warrants to purchase approximately 1,689,192 shares of common stock. The 2011 Offering is scheduled to fund in multiple installments. The first installment of the Offering was completed on December 12, 2011. At closing, the investors purchased $3.5 million of newly issued Preferred Stock and related warrants. In June 2012, an additional $2.5 million of the offered securities were purchased. The remainder of the 2011 Offering, which may be up to $1.5 million, is currently scheduled to be completed in an additional closing in September 2012. However, the final closing is subject to various conditions, including conditions that are outside of our control, including, but not limited to, a minimum stock price prior to the final closing and a minimum trading volume limitation.

Potential Section 409A Liability

As a result of our review of option grants made by us between February 1998 and April 2009, we have determined that certain options granted in prior years may have been non-compliant with Section 409Aof the IRC, or Section 409A, including options granted with an exercise price below fair market value on the date of grant and options that were modified such that they may have become non-compliant with Section 409A.

The primary adverse tax consequence of Section 409A non-compliance is that the holders of non-compliant options are taxed on the value of such options as they vest, and annually thereafter until they are exercised. In addition to ordinary income taxes, holders of non-compliant options are subject to a 20% penalty tax under Section 409A (and, as applicable, similar excise taxes under state laws). Because virtually all holders of stock options granted by us were not involved in or aware that the pricing and/or modification of their options raised these issues, we intend to take actions to address certain of the adverse tax consequences that may apply to these holders. In addition, on March 17, 2011 we entered into indemnification agreements with our executive officers that indemnify those officers from potential Section 409A tax liabilities arising from their prior option awards. As of July 20, 2012, none of the potentially non-compliant options have expired or been forfeited unexercised.

As of April 30, 2012, we have accrued approximately $550,000, which represents our best estimate of the potential liability, in other current liabilities for the contingent liability.

Cash Flows

The following table shows a summary of our cash flows for the periods indicated:

	For the year ended April 30,	
	2012	2011
Net cash used in operating activities	(8,278,366)	(8,403,142)
Net cash used in investing activities	(261,146)	(463,939)
Net cash provided by financing activities	9,467,440	9,186,319

Net cash used in operating activities . Net cash used in operating activities was approximately $8.3 million for the year ended April 30, 2012 compared to net cash used in operating activities of $8.4 million for the year ended April 30, 2011. The decrease in cash used for operating activities compared to the prior year was due primarily to an increase in cash received from customers and reductions in cash paid to employees and suppliers; partially offset by a reduction in other operating cash receipts and an increase in cash paid for operating expenses.

- Cash collected from customers was approximately $766,000 and $245,000 for the years ended April 30, 2012 and 2011, respectively. The $521,000 increase in cash collected from customers in the current year was due primarily to $523,000 received under our research grant and an increase of $35,000 in cash received from cosmetic sales during the current year; partially offset by a decrease of $38,000 in cash received from subleasing unused lab space in our California facility.
- Other operating cash receipts decreased $245,000 in the current year due to an award under the PPACA received in the prior year.
- Cash paid to employees, supplies, and vendors was approximately $9.0M and $8.9M for the years ended April 30, 2012 and 2011, respectively. The slight increase in cash payments is due to a reduction in operating expenses, including cost of sales; partially offset by an increase in other current assets, and a reduction in current liabilities.

Net cash used in investing activities. Net cash used in investing activities was $261,146 for the year ended April 30, 2012 compared to net cash used in investing activities of $463,939 for the year ended April 30, 2011. The decrease in cash used for investing activities was primarily due to a reduction in capitalized legal fees incurred for filing and maintaining our patent portfolio and a reduction in capital equipment expenditures.

Net cash provided by financing activities. Net cash provided by financing activities was $9.5 million for the year ended April 30, 2012 compared to net cash provided by financing activities of $9.2 million for the year ended April 30, 2011. Net cash provided by financing activities for the year ended April 30, 2012 was due primarily to net proceeds of approximately $4.5 million received from the issuance of the convertible notes in June 2011, approximately $0.6 million from the exercise of outstanding warrants in August 2011, approximately $0.7 million proceeds from the issuance of promissory notes payable in May 2011 under the Note Purchase Agreement with Vatea Fund and approximately $3.5 million received from the closing of the Preferred Stock offering in December 2011.

Operating Capital and Capital Expenditure Requirements

Our future capital requirements will depend on many factors that include, but are not limited to the following:

- The initiation, progress, timing and completion of clinical trials for our product candidates and potential product candidates;
- The outcome, timing and cost of regulatory approvals and the regulatory approval process;
- Delays that may be caused by changing regulatory requirements;
- The number of product candidates that we pursue;
- The costs involved in filing and prosecuting patent applications and enforcing and defending patent claims;
- The timing and terms of future in-licensing and out-licensing transactions;
- The cost and timing of establishing sales, marketing, manufacturing and distribution capabilities;
- The cost of procuring clinical and commercial supplies of our product candidates;
- The extent to which we acquire or invest in businesses, products or technologies; and
- The possible costs of litigation.

Based on our working capital at April 30, 2012 and the net proceeds from the registered direct offering described in Note E of our financial statements, we believe we have sufficient capital on hand to continue to fund operations through December 31, 2012. In the event that we satisfy all of the equity conditions under the Offering described above and in further detail in Note E, we believe the funds received under the final closing, in addition to our working capital at April 30, 2012, will be sufficient to fund operations through March 31, 2013.

We will need substantial additional capital in the future in order to complete the development and commercialization of Oxycyte and to fund the development and commercialization of our future product candidates. Until we can generate a sufficient amount of product revenue, if ever, we expect to finance future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. Such funding, if needed, may not be available on favorable terms, if at all. In the event we are unable to obtain additional capital, we may delay or reduce the scope of our current research and development programs and other expenses.

To the extent that we raise additional funds by issuing equity securities, our stockholders may experience additional significant dilution, and debt financing, if available, may involve restrictive covenants. To the extent that we raise additional funds through collaboration and licensing arrangements, it may be necessary to relinquish some rights to our technologies or our product candidates or grant licenses on terms that may not be favorable to us. We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital.

Off-Balance Sheet Arrangements

Since our inception, we have not engaged in any off-balance sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities.

Summary of Significant Accounting Policies

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

Preclinical Study and Clinical Accruals—We estimate our preclinical study and clinical trial expenses based on the services received pursuant to contracts with several research institutions and CROs that conduct and manage preclinical and clinical trials on our behalf. The financial terms of the agreements vary from contract to contract and may result in uneven expenses and payment flows. Preclinical study and clinical trial expenses include the following:

- Fees paid to CROs in connection with clinical trials,
- Fees paid to research institutions in conjunction with preclinical research studies, and
- Fees paid to contract manufacturers and service providers in connection with the production and testing of active pharmaceutical ingredients and drug materials for use in preclinical studies and clinical trials.

Revenue Recognition—Revenues from merchandise sales are recognized upon transfer of ownership, including passage of title to the customer and transfer of the risk of loss related to those goods. Revenues are reported on a net sales basis, which is computed by deducting from gross sales the amount of actual product returns received, discounts, incentive arrangements with retailers and an amount established for anticipated product returns. Our practice is to accept product returns from retailers only if properly requested, authorized and approved. As a percentage of gross sales, returns were less than 5% and 1% for the years ended April 30, 2012 and 2011, respectively.

Stock-Based Compensation—Effective May 1, 2005, we adopted Accounting Standards Codification, or ASC, 718 Compensation — Stock Compensation, using the prospective transition method, which requires the measurement and recognition of compensation expense for all stock-based payment awards granted, modified and settled to our employees and directors after May 1, 2005. Our financial statements reflect the impact of ASC 718. We chose the “straight-line” attribution method for allocating compensation costs and recognized the fair value of each stock option on a straight-line basis over the requisite service period.

We account for equity instruments issued to non-employees in accordance with ASC 505-50 Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services. Equity instruments issued to non-employees are recorded at their fair value on the measurement date and are subject to periodic adjustment as the underlying equity instruments vest.

Recent Accounting Pronouncements

On May 1, 2011, we adopted ASU 2010-06, Fair Value Measurement (Topic 820). The guidance requires the disclosure of roll forward activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). The adoption of ASU 2010-06 did not have a material impact on our financial statements.

On May 1, 2011, we adopted ASU 2010-17, Revenue Recognition—Milestone Method (Topic 605). The guidance establishes a revenue recognition model for contingent consideration that is payable upon the achievement of an uncertain future event, referred to as a milestone. The scope of the ASU is limited to research or development arrangements and requires an entity to record the milestone payment in its entirety in the period received if the milestone meets all the necessary criteria to be considered substantive. The adoption of ASU 2010-17 did not have a material impact on our financial statements.

In February 2011, the FASB issued ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income. Under the amendments to Topic 220, Comprehensive Income, an entity has the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. This update eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. The amendments in this update do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. This guidance will become effective for us with the reporting period beginning May 1, 2012. We do not believe that the adoption of ASU 2011-05 will have a material impact on our financial statements.

In May 2011, the FASB issued ASU 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. The amendments in this update result in common fair value measurement and disclosure requirements in GAAP and IFRSs. Consequently, the amendments change the wording used to describe many of the requirements in GAAP for measuring fair value and for disclosing information about fair value measurements. The amendments in this update will not result in a change in the application of the requirements in Topic 820. This guidance will become effective for us with the reporting period beginning May 1, 2012. We do not believe that the adoption of ASU 2011-05 will have a material impact on our financial statements.

ITEM 7A—QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 8—FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL STATEMENTS

To the Board of Directors and
Stockholders of Oxygen Biotherapuetics, Inc.

We have audited the accompanying balance sheets of Oxygen Biotherapeutics, Inc., formerly, Synthetic Blood International, Inc. (a development-stage enterprise) ("the Company") as of April 30, 2012 and 2011, and the related statements of operations, stockholders' equity (deficit), and cash flows for the years then ended, and for the period from inception, May 26, 1967, through April 30, 2012. The Company's management is responsible for these financial statements. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Oxygen Biotherapeutics, Inc., formerly Synthetic Blood International, Inc. as of April 30, 2012 and 2011, and the results of its operations and its cash flows for years then ended, and from the period from inception, May 26, 1967, through April 30, 2012, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. The Company is a development stage enterprise presently generating insufficient operating revenues, has a significant deficit accumulated during the development stage, and requires substantial additional funds to complete clinical trials and pursue regulatory approvals. In view of these matters, recoverability of a major portion of the recorded asset amounts shown in the accompanying April 30, 2012 balance sheet is dependent upon continued operations of the Company, which in turn is dependent upon the Company's ability to meet its financing requirements on a continuing basis, to maintain present financing, and to generate cash from future operations. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans concerning these matters are described in Note A. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ CHERRY, BEKAERT & HOLLAND, L.L.P.

Raleigh, North Carolina
July 24, 2012

OXYGEN BIOTHERAPEUTICS, INC.
(a development stage enterprise)

BALANCE SHEETS

	April 30, 2012	April 30, 2011
ASSETS		
Current assets		
Cash and cash equivalents	$ 1,879,872	$ 951,944
Accounts receivable	13,385	138,867
Government grant receivable	35,650	-
Inventory	83,370	257,382
Prepaid expenses	455,946	275,876
Other current assets	162,809	8,142
Total current assets	2,631,032	1,632,211
Property and equipment, net	293,606	442,586
Debt issuance costs, net	278,659	-
Intangible assets, net	872,971	699,951
Other assets	65,666	147,608
Total assets	$ 4,141,934	$ 2,922,356
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities		
Accounts payable	$ 542,809	$ 889,376
Accrued liabilities	1,273,837	1,250,573
Convertible preferred stock	1,247,266	-
Current portion of notes payable, net	62,958	43,295
Total current liabilities	3,126,870	2,183,244
Long-term portion of notes payable, net	1,361,110	4,463,635
Total liabilities	4,487,980	6,646,879
Commitments and contingencies; see Note I.		
Stockholders' deficit		
Preferred stock, undesignated, authorized 9,992,500 shares; see Note E.	-	-
Common stock, par value $.0001 per share; authorized 400,000,000 shares; issued and outstanding 29,417,718 and 23,393,307, respectively	2,942	2,339
Additional paid-in capital	107,279,296	88,189,012
Deficit accumulated during the development stage	(107,628,284)	(91,915,874)
Total stockholders' deficit	(346,046)	(3,724,523)
Total liabilities and stockholders' deficit	$ 4,141,934	$ 2,922,356

The accompanying notes are an integral part of these Financial Statements.

OXYGEN BIOTHERAPEUTICS, INC.
(a development stage enterprise)

STATEMENTS OF OPERATIONS

	Period from May 26, 1967 (Inception) to April 30, 2012	Year ended April 30, 2012	Year ended April 30, 2011
Product revenue	$ 470,254	$ 100,519	$ 322,349
Cost of sales	309,468	51,253	219,182
Net product revenue	160,786	49,266	103,167
Government grant revenue	314,515	314,515	-
Total net revenue	475,301	363,781	103,167
Operating expenses			
Selling, general, and administrative	46,909,067	6,091,806	7,682,087
Research and development	22,075,312	2,462,638	2,681,713
Loss on impairment of long-lived assets	363,691	29,534	302,044
Total operating expenses	69,348,070	8,583,978	10,665,844
Net operating loss	68,872,769	8,220,197	10,562,677
Interest expense	39,723,563	7,412,054	171,563
Loss on extinguishment of debt	250,097	-	-
Other expense (income)	(1,218,145)	80,159	(285,944)
Net loss	$ 107,628,284	$ 15,712,410	$ 10,448,296
Net loss per share, basic		$ (0.61)	$ (0.45)
Weighted average number of common shares outstanding, basic		25,928,263	23,346,496
Net loss per share, diluted		$ (0.70)	$ (0.45)
Weighted average number of common shares outstanding, diluted		27,752,386	23,346,496

The accompanying notes are an integral part of these Financial Statements.

OXYGEN BIOTHERAPEUTICS, INC.
(a development stage enterprise)

STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
For the two years ended April 30, 2012 and for the cumulative period May 26, 1967 (date of inception) to April 30, 2012

	Common Stock					
	Number of Shares	Amount	Additional paid-in capital	Stock subscription receivable	Defecit accumulated during the development stage	Total stockholders' equity (deficit)
Balance at April 30, 2010	**21,457,265**	**$ 2,146**	**$ 83,092,470**	**$ 500,000**	**$ (81,467,578)**	**$ 2,127,038**
Common stock sold, net of offering costs	1,910,806	191	4,901,208			4,901,399
Common stock issued for convertible debt	2,350	-	8,707			8,707
Common stock subscription receivable				(500,000)		(500,000)
Compensation on options and restricted stock issued	20,868	2	186,627			186,629
Exercise of warrants and options	2,018	-	-			-
Net loss					(10,448,296)	(10,448,296)
Balance at April 30, 2011	**23,393,307**	**$ 2,339**	**$ 88,189,012**	**$ -**	**$ (91,915,874)**	**$ (3,724,523)**
Common stock sold, net of offering costs	3,368,422	337	7,999,664			8,000,001
Common stock issued for convertible preferred stock	1,874,244	187	3,462,136			3,462,323
Common stock issued as interest on convertible debt	243,830	24	549,809			549,833
Common stock issued as dividend on convertible preferred stock	44,816	5	81,886			81,891
Compensation on options and restricted stock issued	32,022	4	192,894			192,898
Issuance of warrants			3,130,808			3,130,808
Exercise of warrants and options	461,077	46	733,583			733,629
Beneficial conversion feature of convertible debt			2,939,504			2,939,504
Net loss					(15,712,410)	(15,712,410)
Balance at April 30, 2012	**29,417,718**	**$ 2,942**	**$ 107,279,296**	**$ -**	**$ (107,628,284)**	**$ (346,046)**

	Common Stock				
	Number of Shares	Amount	Additional paid-in capital	Defecit accumulated during the development stage	Total stockholders' equity (deficit)
Balance at May 26, 1967	**-**	**$ -**	**$ -**	**$ -**	**$ -**
Common stock sold, net of offering costs	15,466,112	1,058,966	39,749,887		40,808,853
Issuance of common stock for promissory notes	7,310,518	243,621	23,773,189		24,016,810
Compensation on options and restricted stock issued	417,026	36,486	12,682,051		12,718,537
Warrants issued with debt instruments	-	-	8,619,525		8,619,525
Issuance of warrants	-	-	7,805,328		7,805,328
Exercise of warrants and options	1,265,175	164,696	3,630,188		3,794,884
Common stock issued for convertible preferred stock	1,874,244	187	3,462,136		3,462,323
Beneficial conversion on convertible debt	-	-	3,292,648		3,292,648
Beneficial conversion feature of convertible debt	-	-	2,939,504		2,939,504
Common stock issued in conjunction with funding agreements and services rendered	358,425	53,764	883,160		936,924
Contributions of capital by shareholders	-	-	581,818		581,818
Common stock issued as interest on convertible debt	243,830	24	549,809		549,833
Issuance of common stock to officers to retire shareholder loans	69,630	10,444	177,556		188,000
Common stock issued as dividend on convertible preferred stock	44,816	5	81,886		81,891
Contributions of capital for services rendered	-	-	65,700		65,700
Exchange of warrants	2,363,767	3,544	(2,583,884)		(2,580,340)
Common stock par value change	-	(1,541,114)	1,541,114		-
Fractional shares of common stock due to reverse stock split	4,175	(27,681)	27,681		-
Net loss				(107,628,284)	(107,628,284)
Balance at April 30, 2012	**29,417,718**	**$ 2,942**	**$ 107,279,296**	**$ (107,628,284)**	**$ (346,046)**

The accompanying notes are an integral part of these Financial Statements.

OXYGEN BIOTHERAPEUTICS, INC.
(a development stage enterprise)

STATEMENTS OF CASH FLOWS

	Period from May 26, 1967 (Inception) to April 30, 2012	Year ended April 30, 2012	Year ended April 30, 2011
CASH FLOWS FROM OPERATING ACTIVITIES			
Net Loss	$ (107,628,284)	$ (15,712,410)	$ (10,448,296)
Adjustments to reconcile net loss to net cash used in operating activities			
Depreciation and amortization	2,070,808	206,677	311,026
Amortization of deferred compensation	336,750	-	-
Interest on debt instruments	39,315,994	7,397,357	171,563
Loss (gain) on debt settlement and extinguishment	163,097	-	-
Loss on impairment, disposal and write down of long-lived assets	791,173	123,518	302,044
Issuance and vesting of compensatory stock options and warrants	8,290,661	65,373	127,220
Issuance of common stock below market value	695,248	-	-
Issuance of common stock as compensation	682,526	127,525	59,409
Issuance of common stock for services rendered	1,265,279	-	-
Issuance of note payable for services rendered	120,000	-	-
Contributions of capital through services rendered by stockholders	216,851	-	-
Changes in operating assets and liabilities			
Accounts receivable, prepaid expenses and other assets	(793,537)	(74,760)	38,870
Inventory	230,746	(7,280)	238,026
Accounts payable and accrued liabilities	1,942,136	(404,366)	796,996
Net cash used in operating activities	(52,300,552)	(8,278,366)	(8,403,142)
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property and equipment	(1,761,743)	(17,652)	(240,824)
Proceeds from the sale of property and equipment	4,243	4,243	
Capitalization of patent costs and license rights	(1,762,076)	(247,737)	(223,115)
Net cash used in investing activities	(3,519,576)	(261,146)	(463,939)
CASH FLOWS FROM FINANCING ACTIVITIES			
Proceeds from sale of common stock and exercise of stock options and warrants, net of related expenses and payments	44,478,293	8,733,629	4,901,400
Repurchase of outstanding warrants	(2,836,520)	-	-
Proceeds from stockholder notes payable	977,692	-	-
Proceeds from issuance of notes payable, net of issuance costs	7,518,521	837,692	4,389,701
Proceeds from convertible notes, net of issuance costs	13,321,447	4,514,162	-
Proceeds from convertible preferred stock	3,500,000	3,500,000	-
Payments on notes - short-term	(1,259,433)	(118,043)	(104,782)
Payments on notes - long-term	(8,000,000)	(8,000,000)	-
Net cash provided by financing activities	57,700,000	9,467,440	9,186,319
Net change in cash and cash equivalents	1,879,872	927,928	319,238
Cash and cash equivalents, beginning of period	-	951,944	632,706
Cash and cash equivalents, end of period	$ 1,879,872	$ 1,879,872	$ 951,944
Cash paid for:			
Interest	$ 265,303	$ 14,697	$ 3,203
Income taxes	$ 27,528	$ -	$ -

The accompanying notes are an integral part of these Financial Statements.

STATEMENTS OF CASH FLOWS, continued

Non-cash financing activities during the year ended April 30, 2012:

- The Company issued 243,830 shares of restricted common stock for the payment of interest accrued on convertible notes. The shares were issued at a conversion price of $2.255 for the payment of $561,332 interest payable on convertible notes with a gross carrying value of $4,900,000.
- The Company issued 1,583,326 shares of its common stock to redeem 2,332 shares of convertible preferred stock with a fair value of $2,931,406.

Non-cash financing activities during the year ended April 30, 2011:

- The Company issued 2,350 shares of common stock for the conversion of notes payable with a gross carrying value of $8,707 at a conversion price of $3.705 per share. The notes included a discount totaling $5,206 that was recognized as interest expense upon conversion.

NOTE A—DESCRIPTION OF BUSINESS AND GOING CONCERN

Description of Business—Oxygen Biotherapeutics (the “Company”) was originally formed as a New Jersey corporation in 1967 under the name Rudmer, David & Associates, Inc., and subsequently changed its name to Synthetic Blood International, Inc. On June 17, 2008, the stockholders of Synthetic Blood International approved the Agreement and Plan of Merger dated April 28, 2008, between Synthetic Blood International and Oxygen Biotherapeutics, Inc., a Delaware corporation. Oxygen Biotherapeutics was formed on April 17, 2008, by Synthetic Blood International to participate in the merger for the purpose of changing the state of domicile of Synthetic Blood International from New Jersey to Delaware. Certificates of Merger were filed with the states of New Jersey and Delaware, and the merger was effective June 30, 2008. Under the Plan of Merger, Oxygen Biotherapeutics is the surviving corporation and each share of Synthetic Blood International common stock outstanding on June 30, 2008 was converted to one share of Oxygen Biotherapeutics common stock.

The Company was inactive through September 1990, when it began conducting operations for the purpose of developing a synthetic blood emulsion to act as a human blood substitute, and a method of using a PFC compound to facilitate oxygen exchange for individuals with respiratory distress syndrome. The Company submitted an Investigational New Drug Application (“IND”) for Oxycyte, the Company’s alternative to transfused blood for use in surgical and similar medical situations, to the Food and Drug Administration (“FDA”) in 2003 and successfully conducted a Phase I safety clinical study in the fourth quarter of 2003. The results of the Phase I study were consistent with the results of preclinical animal safety studies, and showed a good safety profile for Oxycyte. The Company started Phase II clinical trials of Oxycyte in surgical patients in the fourth quarter of 2004. The protocol was successfully completed in 2006 and filed in April 2008. This protocol was put on clinical hold due to safety concerns raised by the regulatory agency. In April 2009, the Company filed an application with the FDA to obtain orphan drug designation for Oxycyte for the treatment of patients with severe, closed-head Traumatic Brain Injury (“TBI”). The Company filed a Cosmetic Product Ingredient Statement (“CPIS”) with the FDA for Dermacyte Gel, its new Oxycyte-based cosmetic product. The gel is an oxygen-rich formulation of Oxycyte which the Company believes will promote skin health and other desirable cosmetic benefits when applied to the skin. A CPIS is a voluntary registration with the FDA recommended for a cosmetic product’s commercial introduction. Vitavent (previously Fluorovent), an oxygen exchange device, for facilitating the treatment of lung conditions is at the preclinical development stage and is currently inactive. The Company has not generated significant revenues since inception.

Reverse Stock Split

The Company initiated a 1-for-15 reverse stock split effective November 19, 2009. All shares and per share amounts in these consolidated financial statements and notes thereto have been retroactively adjusted to give effect to the reverse stock split.

Going Concern

Management believes the accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"), which contemplate continuation of the Company as a going concern. The Company has an accumulated deficit during the development stage of $107,628,284 and $91,915,874 at April 30, 2012 and 2011, respectively, and used cash in operations of $8,278,366 and $8,403,142 during the years ended April 30, 2012 and 2011, respectively. The Company requires substantial additional funds to complete clinical trials and pursue regulatory approvals. Management is actively seeking additional sources of equity and/or debt financing; however, there is no assurance that any additional funding will be available.

In view of the matters described above, recoverability of a major portion of the recorded asset amounts shown in the accompanying April 30, 2012 balance sheet is dependent upon continued operations of the Company, which in turn is dependent upon the Company’s ability to meet its financing requirements on a continuing basis, to maintain present financing, and to generate cash from future operations. These factors, among others, raise substantial doubt about the Company’s ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or amounts and classification of liabilities that might be necessary should the Company be unable to continue in existence.

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Development Stage

The Company has not commenced its planned principal operations, and has not earned significant revenues; therefore it is considered a “Development Stage Enterprise.”

Use of Estimates

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

Reclassification

For comparability purposes, certain figures for prior periods have been reclassified, where appropriate, to conform to the financial statement presentation used in fiscal year 2012. These reclassifications had no effect on the reported net loss.

Cash and Cash Equivalents

The Company considers all highly liquid instruments with a maturity date of three months or less, when acquired, to be cash equivalents.

Cash Concentration Risk

On July 21, 2010, the Wall Street Reform and Consumer Protection Act permanently increased the FDIC insurance limits to $250,000 per depositor per insured bank. At April 30, 2012, the Company had $260,991 of cash balances uninsured by the FDIC.

Deferred financing costs

Deferred financing costs represent legal, due diligence and other direct costs incurred to raise capital or obtain debt. Direct costs include only “out-of-pocket” or incremental costs directly related to the effort, such as a finder’s fee and accounting and legal fees. These costs will be capitalized if the efforts are successful, or expensed when unsuccessful. Indirect costs are expensed as incurred. Deferred financing costs related to debt are amortized over the life of the debt. Deferred financing costs related to issuing equity are charged to Paid in Capital. The treatment of issuance costs on liabilities for which the Company has elected the fair value option is further described in “Debt or derivative liabilities recorded at fair value” below.

Derivative financial instruments

The Company does not use derivative instruments to hedge exposures to cash flow, market or foreign currency risk. Terms of convertible promissory note instruments are reviewed to determine whether or not they contain embedded derivative instruments that are required under FASB ASC 815, Derivatives and Hedging ("ASC 815") to be accounted for separately from the host contract, and recorded on the balance sheet at fair value. The fair value of derivative liabilities, if any, is required to be revalued at each reporting date, with corresponding changes in fair value recorded in current period operating results.

Freestanding warrants issued by the Company in connection with the issuance or sale of debt and equity instruments are considered to be derivative instruments, and are evaluated and accounted for in accordance with the provisions of ASC 815. Pursuant to ASC 815, an evaluation of specifically identified conditions is made to determine whether the fair value of warrants issued is required to be classified as equity or as a derivative liability. In December 2011, the Company issued warrants to purchase 788,290 shares of Common Stock as part of the Series A Preferred Stock offering. In accordance with ASC 815, these warrants are classified as equity and their calculated fair value of $1,170,311 was recognized as a discount on the related preferred stock in the current period.

Debt or derivative liabilities recorded at fair value

The outstanding Series A Convertible Preferred Stock, par value $0.0001 per share (the "Preferred Stock") has mandatorily redeemable installments with the remainder outstanding at maturity also subject to mandatory redemption, which meets the definition of a "mandatorily redeemable financial instrument" and thus is recorded as a liability at fair value in accordance with ASC 480, *Distinguishing Liabilities From Equity*. Costs related to the issuance of debt for which management has elected the fair value option are recognized in current earnings. Management determines fair value of the outstanding Preferred Stock as of the end of each reporting period and reduces the amount outstanding for any redemptions, exercises, or conversions at the fair value determined at the end of the prior reporting period. The fair value adjustment is charged or credited to Interest expense. On April 30, 2012, the Company recognized approximately $678,672 as non-cash interest expense for the adjustment to fair value of the outstanding Preferred Stock on that date.

The certificate of designations governing the rights and preferences of the Preferred Stock contains several embedded features that would be required to be considered for bifurcation. The Company has elected the fair value option, and as such, will value the host Preferred Stock certificate of designations and embedded features as one instrument. Changes in the fair value of the Preferred Stock will be recorded as interest expense on the Statement of Operations.

Redemptions

The Company expects to redeem the Preferred Stock by issuing shares of the Company's common stock, par value $0.0001 (the "Common Stock"). The difference between the fair value of the Preferred Stock and the fair value of the Common Stock on the date the Common Stock is issued is charged or credited to interest expense.

Conversions

Investors in the Preferred Stock can voluntarily convert their preferred shares to Common Stock at a conversion price defined in the Preferred Stock certificate of designations. The difference between the fair value of the Preferred Stock and the fair value of the Common Stock given in conversion is recognized as a gain or loss on the extinguishment of debt.

Dividends

Dividends paid with scheduled redemptions are expected to be paid in Common Stock. When an investor voluntarily converts its preferred shares, we are required to pay the investor for the dividends that would have been earned had the shares been held to maturity. The portion of those dividends that have not been accrued may be paid in cash or Common Stock, and are referred to as "make whole" payments. Dividends paid in stock are valued at the fair value of the Common Stock as of the date of issuance and are charged to interest expense.

Beneficial conversion and warrant valuation

In accordance with FASB ASC 470-20, Debt with Conversion and Other Options, the Company records a beneficial conversion feature ("BCF") related to the issuance of convertible debt that have conversion features at fixed rates that are in-the-money when issued and the fair value of warrants issued in connection with those instruments. The BCF for the convertible instruments is recognized and measured by allocating a portion of the proceeds to warrants, based on their relative fair value, and as a reduction to the carrying amount of the convertible debt equal to the intrinsic value of the conversion feature. The discount recorded in connection with the BCF and warrant valuation is recognized as non-cash interest expense and is amortized over the life of the convertible note. For the year ended April 30, 2012, the company recorded $1,960,497 and $2,939,504 for the calculated fair value of the warrants and BCF, respectively in conjunction with the convertible notes issued on June 29, 2011 and July 1, 2011.

Preclinical Study and Clinical Accruals

The Company estimates its preclinical study and clinical trial expenses based on the services received pursuant to contracts with several research institutions and contract research organizations ("CROs") that conduct and manage preclinical and clinical trials on its behalf. The financial terms of the agreements vary from contract to contract and may result in uneven expenses and payment flows. Preclinical study and clinical trial expenses include the following:

- Fees paid to CROs in connection with clinical trials,
- Fees paid to research institutions in conjunction with preclinical research studies, and
- Fees paid to contract manufacturers and service providers in connection with the production and testing of active pharmaceutical ingredients and drug materials for use in preclinical studies and clinical trials.

Property and Equipment, Net

Property and equipment are stated at cost, subject to adjustments for impairment, less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method over the following estimated useful lives:

Laboratory equipment	3 – 5 years
Office equipment	5 years
Office furniture and fixtures	7 years
Computer equipment and software	3 years
Leasehold improvements	Shorter of useful life or remaining lease term

Maintenance and repairs are charged to expense as incurred, improvements to leased facilities and equipment are capitalized.

Impairment of Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Revenue Recognition

Revenues from merchandise sales are recognized upon transfer of ownership, including passage of title to the customer and transfer of the risk of loss related to those goods. Revenues are reported on a net sales basis, which is computed by deducting from gross sales the amount of actual product returns received, discounts, incentive arrangements with retailers and an amount established for anticipated product returns. The Company's practice is to accept product returns from retailers only if properly requested, authorized and approved. As a percentage of gross sales, returns were less than 5% in fiscal years 2012 and 2011.

Revenues from a cost-reimbursement grant sponsored by the United States Army, or Grant Revenue, are recognized as milestones under the Grant program are achieved. Grant Revenue is earned through reimbursements for the direct costs of labor, travel, and supplies, as well as the pass-through costs of subcontracts with third-party CROs.

Research and Development Costs

Research and development costs include, but are not limited to, (i) expenses incurred under agreements with contract research organizations and investigative sites, which conduct our clinical trials and a substantial portion of our preclinical studies; (ii) the cost of manufacturing and supplying clinical trial materials; (iii) payments to contract service organizations, as well as consultants; (iv) employee-related expenses, which include salaries and benefits; and (v) facilities, depreciation and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities and equipment, depreciation of leasehold improvements and equipment and laboratory and other supplies. All research and development expenses are expensed as incurred.

Income Taxes

Deferred tax assets and liabilities are recorded for differences between the financial statement and tax bases of the assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is recorded for the amount of income tax payable or refundable for the period increased or decreased by the change in deferred tax assets and liabilities during the period.

Stock-Based Compensation

We account for stock based compensation in accordance with ASC 718 Compensation — Stock Compensation, using the prospective transition method, which requires the measurement and recognition of compensation expense for all stock-based payment awards granted, modified and settled to our employees and directors after May 1, 2005. Our financial statements reflect the impact of ASC 718. We chose the “straight-line” attribution method for allocating compensation costs of each stock option on a straight-line basis over the requisite service period using the Black-Scholes Option Pricing Model to calculate the grant date fair value.

Loss Per Share

Basic loss per share, which excludes antidilutive securities, is computed by dividing loss available to common shareholders by the weighted-average number of common shares outstanding for that particular period. In contrast, diluted loss per share considers the potential dilution that could occur from other equity instruments that would increase the total number of outstanding shares of common stock. Such amounts include shares potentially issuable under outstanding options, warrants and convertible debentures. A reconciliation of the numerator and denominator used in the calculation of basic and diluted net loss per share follows.

	Year ended April 30,	
	2012	2011
Historical net loss per share:		
Numerator		
Net loss, as reported	$ (15,712,410)	$ (10,448,296)
Less: Effect of amortization of interest expense on convertible notes	(3,817,550)	-
Net loss attributed to common stockholders (diluted)	(19,529,960)	(10,448,296)
Denominator		
Weighted-average common shares outstanding	25,928,263	23,346,496
Effect of dilutive securities	1,824,123	-
Denominator for diluted net loss per share	27,752,386	23,346,496
Basic net loss per share	$ (0.61)	$ (0.45)
Diluted net loss per share	$ (0.70)	$ (0.45)

The following outstanding options, convertible note shares and warrants were excluded from the computation of basic and diluted net loss per share for the periods presented because including them would have had an anti-dilutive effect.

	Year ended April 30,	
	2012	2011
Warrants to purchase common stock	5,239,964	3,581,347
Convertible preferred shares outstanding	582,834	-
Options to purchase common stock	351,823	781,738
Convertible note shares outstanding	1,942	1,942

Operating Leases

The Company maintains operating leases for its office and laboratory facilities. The lease agreements may include rent escalation clauses and tenant improvement allowances. We recognize scheduled rent increases on a straight-line basis over the lease term beginning with the date we take possession of the leased space. Differences between rental expense and actual rental payments are recorded as deferred rent liabilities and are included in “Other liabilities” on the balance sheets.

Fair Value

The company records its financial assets and liabilities in accordance with ASC 820 Fair Value Measurements. The Company's balance sheet includes the following financial instruments: cash and cash equivalents, short-term notes payable, convertible preferred stock and convertible notes. The Company considers the carrying amount of its cash and cash equivalents and short-term notes payable to approximate fair value due to the short-term nature of these instruments. The Company did not elect the fair value option and records the carrying value of its convertible notes at amortized cost in accordance with ASC 470-20.

Accounting for fair value measurements involves a single definition of fair value, along with a conceptual framework to measure fair value, with a fair value defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." The fair value measurement hierarchy consists of three levels:

Level one	Quoted market prices in active markets for identical assets or liabilities;
Level two	Inputs other than level one inputs that are either directly or indirectly observable, and
Level three	Unobservable inputs developed using estimates and assumptions; which are developed by the reporting entity and reflect those assumptions that a market participant would use.

We apply valuation techniques that (1) place greater reliance on observable inputs and less reliance on unobservable inputs and (2) are consistent with the market approach, the income approach and/or the cost approach, and include enhanced disclosures of fair value measurements in our financial statements.

The following tables show information regarding assets and liabilities measured at fair value on a recurring basis as of April 30, 2012 and 2011:

		Fair Value Measurements at Reporting Date Using		
	Balance as of April 30, 2012	Quoted prices in Active Markets for Identical Securities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Current Assets				
Cash and cash equivalents	$ 1,879,872	$ 1,879,872	$ -	$ -
Current Liabilities				
Series A convertible preferred stock	$ 1,247,266	$ -	$ -	$ 1,247,266

		Fair Value Measurements at Reporting Date Using		
	Balance as of April 30, 2011	Quoted prices in Active Markets for Identical Securities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Current Assets				
Cash and cash equivalents	$ 951,944	$ 951,944	$ -	$ -
Current Liabilities				
Series A convertible preferred stock	$ -	$ -	$ -	$ -

There were no significant transfers between levels in the years ended April 30 2012 and 2011.

Financial assets or liabilities are considered Level 3 when their fair values are determined using pricing models, discounted cash flow methodologies or similar techniques and at least one significant model assumption or input is unobservable. The following table provides a summary of the changes in fair value of our financial liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the year ended April 30, 2012:

	Series A Convertible Preferred Stock
Issued on December 12, 2011:	$ 3,500,000
Conversions to Common Stock	(3,462,338)
Redemptions	-
Adjustments to fair value as of April 30, 2012	1,209,604
Transfers in and/or out of Level 3	-
Balance as of April 30, 2012	$ 1,247,266

The Preferred Stock is recorded at fair value with changes in fair value recorded as gains or losses within Non-cash-interest expense. The estimate of the fair value of the securities noted above, as of the valuation date, is based on the rights and privileges afforded to the Preferred Stock. The fair value of the Preferred Stock is determined at each reporting period by calculating the number of conversion shares underlying the outstanding Preferred Stock as described in the Series A Convertible Preferred Stock Certificate of Designations at the average volume weighted average price of our common stock on the valuation date (unobservable inputs).

Recent Accounting Pronouncements

On May 1, 2011 the Company adopted ASU 2010-06, Fair Value Measurements and Disclosures (Topic 820). The guidance requires the disclosure of roll forward activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). The adoption of ASU 2010-06 did have a material impact on the Company's financial statements.

On May 1, 2011 the Company adopted ASU, No. 2010-17, Revenue Recognition—Milestone Method (Topic 605): Milestone Method of Revenue Recognition (a consensus of the FASB Emerging Issues Task Force). It establishes a revenue recognition model for contingent consideration that is payable upon the achievement of an uncertain future event, referred to as a milestone. The scope of the ASU is limited to research or development arrangements and requires an entity to record the milestone payment in its entirety in the period received if the milestone meets all the necessary criteria to be considered substantive. The adoption of ASU 2010-17 did not have a material impact on the Company's financial statements.

In February 2011, the FASB issued ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income. Under the amendments to Topic 220, Comprehensive Income, an entity has the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. This update eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. The amendments in this update do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. This guidance will become effective for the Company with the reporting period beginning May 1, 2012. The Company does not believe that the adoption of ASU 2011-05 will have a material impact on its financial statements.

In May 2011, the FASB issued ASU 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. The amendments in this update result in common fair value measurement and disclosure requirements in accounting principles generally accepted in the United States of America and IFRSs. Consequently, the amendments change the wording used to describe many of the requirements in accounting principles generally accepted in the United States of America for measuring fair value and for disclosing information about fair value measurements. The amendments in this update will not result in a change in the application of the requirements in Topic 820. This guidance will become effective for us with the reporting period beginning May 1, 2012. The Company does not believe that the adoption of ASU 2011-04 will have a material impact on its financial statements.

NOTE C—BALANCE SHEET COMPONENTS

Inventory

The Company operates in an industry characterized by rapid improvements and changes to its technology and products. The introduction of new products by the Company or its competitors can result in its inventory being rendered obsolete or requiring it to sell items at a discount. The Company evaluates the recoverability of its inventory by reference to its internal estimates of future demands and product life cycles. If the Company incorrectly forecasts demand for its products or inadequately manages the introduction of new product lines, this could materially impact its financial statements by having excess inventory on hand. The Company's future estimates are subjective and actual results may vary. Management evaluated the Company's inventory and determined that, due to the results of on-going stability testing, the value of the clinical grade Oxycyte® is permanently impaired. The Company recorded $162,326 as a charge to Oxycyte development costs which is reflected in Research and Development costs for the year ended April 30, 2011.

During the year ended April 30, 2012, the Company reclassified raw materials with a carrying value $107,271 at April 30, 2011 to Other Current Assets. These raw materials are used in the Company’s ongoing research and development efforts and are expensed as Research and Development costs in the period they are consumed.

Inventories are recorded at cost using the First-In-First-Out (“FIFO”) method. Ending inventories are comprised of raw materials and direct costs of manufacturing and valued at the lower of cost or market. Inventories consisted of the following as of April 30, 2012 and 2011:

	April 30, 2012	April 30, 2011
Raw materials	$ 25,579	$ 107,271
Work in process	-	124,308
Finished goods	57,791	25,803
	$ 83,370	$ 257,382

Other current assets

Other current assets consist of the following:

	April 30, 2012	April 30, 2011
R&D materials	$ 116,936	$ -
Dermacyte samples	19,529	1,052
Other	26,344	7,090
	$ 162,809	$ 8,142

Property and equipment, net

Property and equipment consist of the following:

	April 30, 2012	April 30, 2011
Laboratory equipment	$ 968,101	$ 970,463
Office furniture and fixtures	140,255	140,255
Computer equipment and software	134,005	153,234
Leasehold improvements	4,810	4,810
	1,247,171	1,268,762
Less: Accumulated depreciation and amortization	(953,565)	(826,176)
	$ 293,606	$ 442,586

Depreciation and amortization expense was approximately $161,494 and $182,197 for the years ended April 30, 2012 and 2011, respectively.

Other assets

Other assets consist of the following:

	April 30, 2012	April 30, 2011
Prepaid royalty fee	$ 50,000	$ 50,000
Other	15,666	15,086
Reimbursable patent expenses- Glucometrics	-	82,522
	$ 65,666	$ 147,608

Reimbursable patent expenses- Glucometrics, Inc.

In September 2008, the Company assigned all of its patent rights related to glucose monitoring technology to Glucometrics, Inc. ("Glucometrics"). Pursuant to the terms of the agreement, Glucometrics is required to reimburse the Company for all of the legal and filing costs associated with prosecuting and maintaining the licensed patents. On January 14, 2011, the Company notified the management of Glucometrics of its intent to terminate the license agreement for their failure to cure their material breach of the licensing contract.

Glucometrics is currently involved in a corporate restructuring in order to receive external funding for continued development of their glucose monitoring technology. Based on management's review of Glucometrics restructuring plan, in January 2012 the Company determined the receivable to be uncollectible and wrote-off the remaining balance of $93,089 as an Other Expense.

Accrued liabilities

Accrued liabilities consist of the following:

	April 30, 2012	April 30, 2011
Section 409A tax liability	$ 532,350	$ 532,350
Deferred government grant revenue	244,013	-
Employee related	352,400	493,640
Convertible note interest payable	59,583	
Preferred stock dividend payable	21,479	-
Other	64,012	74,583
Clinical trial related	-	150,000
	$ 1,273,837	$ 1,250,573

NOTE D—NOTES PAYABLE

The following table summarizes the Company's outstanding notes payable as of April 30, 2012 and 2011:

	April 30, 2012	April 30, 2011
Current portion of notes payable	$ 55,763	$ 36,100
Current portion of convertible notes payable	7,195	7,195
Current portion of notes payable, net	$ 62,958	$ 43,295
Long-term portion of notes payable	$ -	$ 6,881,600
Less: Unaccreted premium	-	(2,417,965)
	-	4,463,635
Long-term portion of convertible notes payable	$ 4,900,001	$ -
Less: Unamortized discount	(3,538,891)	-
	1,361,110	-
Long-term portion of notes payable, net	$ 1,361,110	$ 4,463,635

Note Purchase Agreement

On October 12, 2010 the Company entered into a Note Purchase Agreement with JP SPC 1 Vatea, Segregated Portfolio ("Vatea Fund"), as amended on December 29, 2010, whereby it agreed to issue and sell to Vatea Fund an aggregate of $5,000,000 of senior unsecured promissory notes (the "Vatea Notes") on or before April 30, 2011. The Vatea Notes will mature on October 31, 2013, unless the holders of a majority of the Vatea Notes consent in writing to a later maturity date. Interest does not accrue on the outstanding principal balance of the Vatea Notes (other than following the maturity date or earlier acceleration). Instead, on the maturity date, the Company must pay the holders of the Vatea Notes a final payment premium aggregating $3,000,000, in addition to the principal balance then otherwise outstanding under the Vatea Notes. The Vatea Notes provide that the Company has the option, at its sole discretion and without penalty, to prepay the outstanding balance under the Vatea Notes plus the amount of the final payment premium prior to the maturity date. In addition, the holders of majority of the Vatea Notes may request that the Company prepay the Vatea Notes in an amount equal to the proceeds of any subsequent closings under the Securities Purchase Agreement with Vatea Fund, dated June 8, 2009, and subsequently amended.

As further discussed in Note H below, on November 14, 2011 the Company delivered 2,807,018 shares of its common stock to the holders of the SPA against payment to the Company of an aggregate of $8,000,000. Pursuant to the terms of the Note Purchase Agreement, the Company used the proceeds from the Final Closing to prepay the outstanding balance under the notes, including $2,367,574 of unaccreted final payment premium thereunder.

For the years ended April 30, 2012 and 2011, the Company recorded interest expense of $2,836,366 and $162,635, respectively, for the accretion of the final payment premium.

Convertible Note

On June 16, 2011, the Company entered into a Convertible Note and Warrant Purchase Agreement with an institutional investor pursuant to which the Company agreed to issue and sell to the Purchaser in a private placement a subordinated convertible promissory note (the "Note") with a principal amount of $4.6 million and warrants (the "Warrants") to purchase 2,039,911 shares of Common Stock. On June 29, 2011, the Company increased the offering with an additional institutional investor by approximately $0.3 million and additional Warrants to purchase 133,038 shares of common stock; for a total offering size of approximately $4.9 million (the "Offering") and Warrants to purchase an aggregate of 2,172,949 shares of Common Stock.

Interest on the Notes accrues at a rate of 15% annually and will be paid in quarterly installments commencing on the third month anniversary of issuance. The Notes will mature 36 months from the date of issuance. The Note may be converted into shares of Common Stock at a conversion price of $2.255 per share (subject to adjustment for stock splits, dividends and combinations, recapitalizations and the like) (the "Conversion Price") at any time, in whole or in part, at any time at the option of the holders of the Notes. The Notes also will automatically convert into shares of Common Stock at the Conversion Price at the election of a majority-in-interest of the holders of notes issued under the purchase agreement or upon the acquisition or sale of all or substantially all of the assets of the Company. The Company may make each applicable interest payment or payment of principal in cash, shares of Common Stock at the Conversion Price, or any combination thereof. The Company may elect to prepay all or any portion of the Note without prepayment penalties only with the approval of a majority-in-interest of the note holders under the Purchase Agreement at the time of the election. The Notes contain various events of default such as failing to timely make any payment under the Note when due, which may result in all outstanding obligations under the Note becoming immediately due and payable. The Warrants were issued in three approximately equal tranches, with exercise prices of $2.15, $2.60 and $2.85, respectively, per share of Common Stock (in each case subject to adjustment for stock splits, dividends and combinations, recapitalizations and the like). The Warrants are exercisable on or after the date of issuance and expire on the earlier to occur of the five year anniversary of the date of issuance or an acquisition or sale of all or substantially all of the assets of the Company. The exercise prices of shares of Common Stock underlying the Warrants are subject to adjustment in the event of future issuances of Common Stock or equivalents by the Company at a price less than the applicable exercise price, but in no event shall a Warrant exercise price be adjusted to less than $2.255 per share (subject to adjustment for stock splits, dividends and combinations, recapitalizations and the like) of Common Stock.

On June 29, 2011, the Company issued a Note with a principal amount of approximately $300,000 and Warrants to purchase 133,038 shares of Common Stock. On July 1, 2011, the Company issued a separate Note with a principal amount of $4,600,000 and Warrants to purchase 2,039,911 shares of Common Stock. The aggregate gross proceeds to the Company from the Offering were approximately $4.9 million, excluding any proceeds from the exercise of any Warrants. The aggregate placement agent fees were $297,000 and legal fees associated with the offering were $88,839. These costs have been capitalized as debt issue costs and will be amortized as interest expense over the life of the Note. The total value allocated to the Warrants was approximately $1,960,497 and was recorded as a debt discount against the proceeds of the Notes. In addition, the beneficial conversion features related to the Notes were determined to be approximately $2,939,504. As a result, the aggregate discount on the Notes totaled $4.9 million, and is being amortized over term of the Notes.

The Company recorded interest expense of $2,089,205 for the twelve months ended April 30, 2012. This amount includes amortization of the associated debt issue costs of $107,180 and accretion of the debt discount of $1,361,110 for the twelve months ended April 30, 2012.

NOTE E—SERIES A CONVERTIBLE PREFERRED STOCK

Under the Company's Certificate of Incorporation, the Board of Directors is authorized, without further stockholder action, to provide for the issuance of up to 10,000,000 shares of preferred stock, par value $0.0001 per share, in one or more series, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof.

On December 8, 2011, the Company filed a Certificate of Designation with the Secretary of State of the State of Delaware designating 7,500 shares of our authorized but unissued shares of preferred stock as Series A Convertible Preferred Stock.

Series A Convertible Preferred Stock

On December 12, 2011, the Company sold 3,500 units for net proceeds of approximately $3.2 million. Each unit sold consisted of (i) one share of the Company's Preferred Stock and (ii) a warrant representing the right to purchase 225.2 shares of Common Stock (the "2011 Warrants"), at a price of $1,000 per unit, less issuance costs. The shares of Preferred Stock were immediately convertible and the 2011 Warrants are exercisable on the one-year anniversary of the closing date.

The table below sets forth a summary of the designation, powers, preferences and rights of the Preferred Stock.

Maturity	The shares of Preferred Stock will mature on the one year anniversary of issuance of such shares.
Amortization	On each one month anniversary of issuance of the Preferred Stock, the Company will redeem, subject to certain exceptions (i) with respect to shares issued in the first closing, one-sixth of the initial stated value of the Preferred Stock, and (ii) with respect to shares issued in the additional closings, 667 shares of Preferred Stock.
Amortization Payments	The Company may elect to pay the monthly amortization payments in cash or, subject to certain conditions, in shares of Common Stock by delivering that number of shares of Common Stock equal to the amount of the monthly amortization payment divided by a per share amortization price, which shall be the lesser of (i) the then-existing conversion price, which is initially $2.22 per share of common stock and (ii) 90% of the calculated market price per share of Common Stock.
Dividends	The shares of Preferred Stock will carry a dividend equal to 7% per annum, paid monthly in arrears. The Company may elect to pay dividends in cash or, subject to certain conditions, in shares of Common Stock. If the Company pays dividends in shares of Common Stock, the shares will be valued at a calculated per share market price. Dividends shall be subject to a make-whole through maturity upon any earlier conversion, redemption or amortization.
Market Price	For purposes of the amortization or dividend payments on the Preferred Stock as described above, the market price shall be equal to the average of the volume weighted average prices (the "VWAP") for the five lowest trading days, excluding the two lowest trading days of such period, ending on the 23rd trading day prior to the applicable payment date, subject to a "true up" based on the five lowest trading days during the twenty consecutive trading days ending on the trading day immediately prior to the applicable payment date.
Conversion	Holders may elect to convert shares of Preferred Stock into shares of Common Stock at the then-existing conversion price at any time. The initial conversion price is $2.22 per share of Common Stock, and is subject to certain adjustments, including an anti-dilution provision that reduces the conversion price upon the issuance of any Common Stock or securities convertible into Common Stock at an effective price per share less than the conversion price.
Redemption	If any shares of Preferred Stock remain outstanding on the maturity date after giving effect to any conversions on such date, the Company is required to redeem such preferred shares in cash in an amount equal to the then-existing conversion amount for each preferred share. Additionally, after a triggering event, the holders of the shares of Preferred Stock have the right, at their option, to require the Company to redeem all or a portion of the then outstanding preferred shares in cash at the triggering event redemption price. Triggering events include, among other events, certain breaches by the Company of its agreements, failures to pay amounts when due, failures to maintain any registration statement as required, failure to keep its Common Stock listed on any of the specified eligible markets (including the OTC Bulletin Board), and failure to keep a sufficient number of authorized shares reserved for issuance on conversion of the Preferred Stock or exercise of the 2011 Warrants. The triggering event redemption price will be the greater of (i) 125% of the then-existing conversion amount, or (ii) the product of the then-existing conversion amount and the greatest closing sales price of the Company's Common Stock beginning on the last trading day prior to the triggering event and ending on the date the holder of the Preferred Stock delivers a notice of redemption. In addition, the Company is required to pay to the holders of the Preferred Stock any additional make-whole amounts accrued at the date of the triggering event.

Liquidation preference	In the event of the Company's voluntary or involuntary dissolution, liquidation or winding up, each holder of Preferred Stock will be entitled to be paid a liquidation preference equal to the initial stated value of such holder's Preferred Stock of $2.22 per share, plus accrued and unpaid dividends and any other payments that may be due on such shares, before any distribution of assets may be made to holders of capital stock ranking junior to the Preferred Stock.
Voting rights	Shares of Preferred Stock will generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding. Preferred Stock will be required to amend the terms of the Preferred Stock.
Equity Conditions	The "Equity Conditions" will be satisfied on any date if: (i) on each day during the 30 trading days prior to such measurement date, all shares of Common Stock issued and issuable upon conversion of the Preferred Stock , as dividends on the Preferred Stock and upon exercise of the 2011 Warrants will have been issued or, to the extent not yet issued will be eligible for sale without restriction and without the need for registration under the securities laws; (ii) on each such day, the Common Stock is listed on The NASDAQ Capital Market, on one of several named alternative markets and, if subject to certain delisting proceedings or a failure to meet the maintenance standards of such an exchange, the Company must meet the minimum listing conditions of one of the other permitted markets (including the OTC Bulletin Board); (iii) on each such day, the Company has delivered Common Stock upon conversion by holders of Preferred Stock on a timely basis, as and if required; (iv) any applicable shares to be issued in connection with the determination may be issued in full without violating the ownership limitations described below or the rules of the Company's principal market (except that the ownership limitations will not prevent the Company from delivering Common Stock in amounts up to such limits); (v) during such period, the Company has made timely payments as required; (vi) there has been no triggering event or potential triggering event under the certificate of designations; (vii) the Company has no knowledge of any fact that would cause the shares of Common Stock issuable in connection with the Preferred Stock or Preferred Warrants not to be eligible for sale without restriction; (viii) the Company meets certain minimum average trading volume qualifications on its principal market (i.e., a $375,000 aggregate dollar volume over the applicable 20 trading days); and (ix) we are otherwise in material compliance with our covenants and representations in the related Preferred Stock transaction documents, including the certificate of designations.

The Company will not affect any conversion of the Preferred Stock, nor shall a holder convert its shares of Preferred Stock, to the extent that such conversion would cause the holder to have acquired, through conversion of the Preferred Stock or otherwise, beneficial ownership of a number shares of Common Stock in excess of 4.99% of the Common Stock outstanding immediately preceding the conversion.

While the Preferred Stock is outstanding, we may not incur any additional indebtedness, with the exception of ordinary course equipment leases, obligations to vendors and similar exceptions. The Company is also prohibited from issuing additional or other capital stock or from issuing variable rate securities, without the consent of holders of the Preferred Stock then outstanding.

The scheduled conversions and actual activity for the Preferred Stock as of April 30, 2012 is as follows:

Installement Date	Pre-delivery Date	Preferred Shares Redeemedable	Less: Preferred Shares Redeemed / Converted at 4/30/12	Balance of Preferred Stock at 4/30/12	Fair Value of Preferred Stock at 4/30/12
1/12/2012	12/12/2011	583	(583)	-	$ -
2/13/2012	1/10/2012	583	(583)	-	-
3/12/2012	2/10/2012	583	(583)	-	-
4/12/2012	3/10/2012	583	(583)	-	-
5/12/2012	4/10/2012	583		583	622,565
6/12/2012	5/10/2012	583		583	622,565
7/12/2012	6/8/2012	2		2	2,136
Convertible preferred stock		3,500	(2,332)	1,168	$ 1,247,266

As of April 30, 2012, 2,332 shares of Preferred Stock were converted into 1,583,326 shares of Common Stock. The Company recorded interest expense of $530,943 related to these conversions. The interest expense was calculated as the difference between the fair value of the preferred shares converted and the fair value of the Common Stock on the date of the conversion.

As of April 30, 2012, the following is a summary of the non-cash interest related to the Preferred Stock:

Interest expense on conversion of preferred stock	Amount
Dividends paid in common stock	$ 81,890
Dividends paid in common stock with redemptions	-
Fair value of warrants issued with preferred shares	1,170,322
Interest expense on redemption of preferred stock	530,943
Fair value adjustment to preferred stock	678,661
Accrued dividends payable	21,479
Non-cash interest expense as of April 30, 2012	$ 2,483,295

On April 11, 2012, the Company elected to make the scheduled May 14, 2012 installment and dividend payment in shares of Common Stock and on that date issued 285,686 shares of Common Stock under the pre-delivery procedures described in the certificate of designation. On May 14, 2012, the Company issued an additional 76,466 shares of Common Stock based upon the comparison of the market price on April 11, 2012 and the market price on May 14, 2012. The Company expects to make subsequent scheduled payments in shares of Common Stock to the extent the Preferred Stock has not been voluntarily converted by the holders.

On April 11, 2012, the Company elected to make the scheduled May 14, 2012 installment payment in shares of Common Stock and on that date issued 276,518 shares of Common Stock. The Company expects to make subsequent scheduled payments in shares of Common Stock to the extent the Preferred Stock has not been voluntarily converted by the holders.

Additionally, between May 1, 2012 and July 20, 2012, the Company issued an additional 455,934 shares of common stock upon conversion of the outstanding 1,168 preferred shares. The Company expects to report interest expense of $141,372 related to these conversions in the first quarter of 2013.

As further discussed in Note L below, on June 15, 2012, subsequent to year end, the Company issued an additional 2,500 shares of Preferred Stock under the Certificate of Designations described above. As of July 20, 2012, there were 1,833 shares of Preferred Stock outstanding.

NOTE F—INTANGIBLE ASSETS

The following table summarizes our intangible assets as of April 30, 2012:

Asset Category	Value Assigned	Weighted Average Amortization Period (in Years)	Impairments	Accumulated Amortization	Carrying Value (Net of Impairments and Accumulated Amortization)
Patents	$ 546,624	11.7	$ -	$ (233,989)	$ 312,635
License Rights	540,668	16.6	-	(89,429)	451,239
Trademarks	138,631	N/A	(29,534)	-	109,097
Total	$ 1,225,923		$ (29,534)	$ (323,418)	$ 872,971

The following table summarizes our intangible assets as of April 30, 2011:

Asset Category	Value Assigned	Weighted Average Amortization Period (in Years)	Impairments	Accumulated Amortization	Carrying Value (Net of Impairments and Accumulated Amortization)
Patents	$ 566,564	10.1	$ (202,934)	$ (214,840)	$ 148,790
License Rights	558,532	17.6	(68,602)	(63,395)	426,535
Trademarks	155,134	N/A	(30,508)	-	124,626
Total	$ 1,280,230		$ (302,044)	$ (278,235)	$ 699,951

For the years ended April 30, 2012 and 2011, the aggregate amortization expense on the above intangibles was approximately $45,183 and $128,829, respectively. The following table summarizes the aggregate amortization expense over the remaining life of the patents and license rights as of April 30, 2012:

Year ending April 30,	Amount
2013	$ 51,620
2014	50,590
2015	50,226
2016	49,650
2017	45,733
Therafter	516,055
	$ 763,874

Patents and License Rights—The Company currently holds, has filed for, or owns exclusive rights to, US and worldwide patents covering 13 various methods and uses of our PFC technology. We capitalize amounts paid to third parties for legal fees, application fees and other direct costs incurred in the filing and prosecution of our patent applications. These capitalized costs are amortized on a straight-line method over their useful life or legal life, whichever is shorter.

During the years ended April 30, 2012 and 2011, the Company recorded non-cash impairment charges of approximately $0 and $59,000, respectively, against the net carrying value of certain patent assets based on the Company's development strategy for fiscal years 2012 and 2013. These asset impairment charges primarily related to the Company's wound device product candidates which were determined not to be a core component of the Company's development strategy. The Company will continue to seek a partner to utilize this technology and develop a commercial product candidate under a license agreement, joint venture, or other arrangement whereby the costs and risks of development will be transferred to a third party. Additionally, during the fourth quarter of fiscal years 2012 and 2011, the Company performed a comprehensive review of its patent portfolio and identified multiple instances in which the technology covered in a patent application was adequately protected under an existing patent application. As of April 30, 2012 and 2011, the Company recorded impairment charges of approximately $0 and $212,000, respectively, for these withdrawn or abandoned patent applications.

Trademarks—The Company currently holds, or has filed for, trademarks to protect the use of names and descriptions of our products and technology. We capitalize amounts paid to third parties for legal fees, application fees and other direct costs incurred in the filing and prosecution of our trademark applications. These trademarks are evaluated annually in accordance with ASC 350, Intangibles – Goodwill and other. We evaluate (i) our expected use of the underlying asset, (ii) any laws, regulations, or contracts that may limit the useful life, (iii) the effects of obsolescence, demand, competition, and stability of the industry, and (iv) the level of costs to be incurred to commercialize the underlying asset.

The Company completed its annual impairment test of indefinite-lived intangible assets during the fourth quarter of fiscal years 2012 and 2011. Due to changes in the Company's product development strategy and revised expectations regarding future net sales generated from the use of certain trademarks, the Company determined that their carrying values exceeded the estimated fair value by approximately $0 and $18,000, respectively, predominantly in the wound device product category. Additionally, during the fourth quarter of fiscal years 2012 and 2011, the Company wrote-off approximately $29,000 and $13,000, respectively,

of capitalized costs for trademark applications that were withdrawn or abandoned during the year.

NOTE G—SEGMENT REPORTING

In the Company's operation of its business, management, including its chief operating decision maker, the Company's Chief Executive Officer, reviews certain financial information, including segmented internal profit and loss statements prepared on a basis not consistent with GAAP.

The Company operates in a single market consisting of the design, development, marketing, sales and support of its Dermacyte® cosmetic segment. The Company's commercial revenues are derived from sales of the Dermacyte line of topical cosmetic products in the United States and Europe. The Company does not engage in intercompany revenue transfers between segments.

The Company's management evaluates performance based primarily on revenues in the geographic locations in which the Company operates. Segment profit or loss for each segment includes certain sales and marketing expenses directly attributable to the segment and excludes certain expenses that are managed outside the reportable segments.

Costs that are identifiable are allocated to the segments that benefit. Allocated costs may include those relating to development and marketing of products and services from which multiple segments benefit, or those costs relating to services performed by one segment on behalf of other segments. Each allocation is measured differently based on the specific facts and circumstances of the costs being allocated. Certain other corporate-level activity is not allocated to the Company's segments, including costs of: human resources; legal; finance; information technology; corporate development and procurement activities; research and development; and employee severance.

The company has recast certain prior period amounts within this note to conform to the way it internally managed and monitored segment performance during the current fiscal year.

Net revenues and segment profit, classified by the Company's reportable segments are as follows:

	Year ending April 30, 2012	2011
Product revenue		
United States	$ 74,519	$ 101,582
Latin America	26,000	-
Europe	-	220,767
Total product revenue	$ 100,519	$ 322,349

	Year ending April 30, 2012	2011
Segment loss (income)		
United States	$ 355,241	$ 831,529
Latin America	(10,585)	-
Europe	-	(17,406)
Unallocated revenues		
Government grant revenue	(314,515)	-
Unallocated expenses		
General and administrative	5,697,884	6,764,797
Research and development	2,462,638	2,681,713
Loss on impairment of long-lived assets	29,534	302,044
Net interest and other expense (income)	7,492,213	(114,381)
Net loss	$ 15,712,410	$ 10,448,296

Assets are not allocated to segments for internal reporting presentations. A portion of amortization and depreciation may be included with various other costs in an overhead allocation to each segment and it is impracticable for the Company to separately identify the amount of amortization and depreciation by segment that is included in the measure of segment profit or loss.

NOTE H—STOCKHOLDERS' EQUITY

Common Stock

Our Certificate of Incorporation authorizes us to issue 400,000,000 shares of $0.0001 par value common stock. As of April 30, 2012 and 2011, there were 29,417,718 and 23,393,307shares of common stock issued and outstanding.

Securities Purchase Agreement

On November 11, 2011, the Company and JP SPC 1 Vatea, Segregated Portfolio ("Vatea Fund") entered into Amendment No. 3 to the Securities Purchase Agreement (the "SPA") dated June 8, 2009. Under the third amendment, the parties deemed all milestones under the SPA achieved in exchange for a reduction in the purchase price for shares of the Company's common stock under the SPA to $2.85 per share.

On November 14, 2011, following entry into Amendment No. 3 to the SPA, the final closing (the "Final Closing") under the SPA occurred pursuant to which the Company delivered 2,807,018 shares of its common stock to the holders of the SPA against payment to the Company of an aggregate of $8,000,000. In connection with the Final Closing, the Company paid fees to Melixia SA for services provided as facilitating agent, which consisted of 561,404 shares of the Company's common stock. All issuances were made in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, and Rule 506 thereunder. As further discussed in Note D above, pursuant to the terms of the Note Purchase Agreement with Vatea Fund, the Company used the proceeds from the Final Closing to prepay the outstanding balance under the notes, including $2,367,574 of unaccreted final payment premium thereunder. Following the Final Closing, no securities remain available for purchase under the SPA and no outstanding balance remains under the Note Purchase Agreement.

Registered Direct Offering

On May 4, 2010, the Company entered into a placement agency agreement (the "Placement Agency Agreement") with Roth Capital Partners, LLC (the "Placement Agent") relating to the sale by the Company of 1,724,138 units to certain institutional investors pursuant to a registered direct offering at a purchase price of $2.90 per unit (each, a "Unit" and collectively, the "Units"). Each Unit consisted of one share of the Company's common stock and a warrant to purchase 0.425 shares of common stock. The warrants have a five-year term from the date of issuance, are exercisable on or after the date of issuance, and are exercisable at an exercise price of $5.32 per share of Common Stock.

The sale of the Units was made pursuant to subscription agreements, dated May 4, 2010 (the "Subscription Agreements"), with each of the investors. The Offering was completed on May 7, 2010.

The aggregate net proceeds to the Company, after deducting placement agent fees and other estimated offering expenses payable by the Company, were approximately $4.4 million. The Placement Agent received a placement fee equal to 6.5% of the gross proceedings of the Offering. The Company also reimbursed the Placement Agent $75,000 for expenses incurred in connection with the Offering. The Placement Agency Agreement contained customary representations, warranties, and covenants by the Company. It also provided for customary indemnification by the Company and the Placement Agent for losses or damages arising out of or in connection with the sale of the securities offered

Warrants

As further described in Note E above, on December 12, 2011, the Company issued warrants to purchase 788,290 shares of common stock as part of the Series A Convertible Preferred Stock Offering. The warrants were issued at an initial exercise price of $2.22. The Warrants were issued with a six-year term and are exercisable beginning December 12, 2012.

As further described in Note D above, on June 29 and July 1, 2011, the Company issued warrants to purchase 133,038 and 2,039,911shares of restricted common stock respectively, as part of the convertible note offering. The warrants were issued in three equal tranches with a weighted average exercise price of $2.50. The warrants were issued with a five-year term and were exercisable upon issuance.

During the year ended April 30, 2012, the Company received $733,629 and issued 461,077 shares of Common Stock in connection with the exercise of outstanding warrants.

The following table summarizes the Company's warrant activity for the years ended April 30, 2012 and 2011:

	Warrants		Weighted Average Exercise Price	
Outstanding at April 30, 2010	**3,322,154**		**$ 3.89**	
Granted	732,758		5.32	
Exercised	-		-	
Cancelled	-		-	
Forfeited	(618,119)		4.62	
Other	144,554		2.90	
Outstanding at April 30, 2011	**3,581,347**		**$ 3.90**	
Granted	2,961,239		2.45	
Exercised	(453,744)		1.62	
Forfeited	(1,656,396)		3.68	
Other	807,518	(1)	1.31	
Outstanding at April 30, 2012	**5,239,964**		**$ 2.08**	(1)

(1) The Company has warrants outstanding that contain anti-dilution clauses requiring a repricing in the event of subsequent equity sales. Subsequent to the closing of the Series A Preferred Stock Offering, the repricing of these warrants resulted in an increase of 807,518 potentially issuable shares and a $0.84 reduction in the weighted average exercise price of the Company's outstanding warrants.

The Company received $733,629 and issued 453,744 shares of Common Stock from the exercise of warrants.

1999 Amended Stock Plan

In October 2000, the Company adopted the 1999 Stock Plan, as amended and restated on June 17, 2008 (the "Plan"). Under the Plan, with the approval of the Compensation Committee of the Board of Directors, the Company may grant stock options, restricted stock, stock appreciation rights and new shares of Common Stock upon exercise of stock options. On September 30, 2011, the Company's stockholders approved amendment to the Plan which increased the amount of shares authorized for issuance under the Plan to 6,000,000, up from 800,000 previously authorized. As of April 30, 2012 the Company had 5,531,630 shares of Common Stock available for grant under the Plan.

The following table summarizes the shares available for grant under the Plan for the years ended April 30, 2012 and 2011:

	Shares Available for Grant
Balances, at April 30, 2010	182,424
Options granted	(60,345)
Options cancelled/forfeited	129,253
Restricted stock granted	(7,500)
Restricted stock cancelled/forfeited	-
Balances, at April 30, 2011	243,832
Additional shares reserved	5,200,000
Options granted	(107,309)
Options cancelled/forfeited	263,224
Restricted stock granted	(209,461)
Restricted stock cancelled/forfeited	141,344
Balances, at April 30, 2012	5,531,630

Plan Stock Options

Stock options granted under the Plan may be either incentive stock options ("ISOs"), or nonqualified stock options ("NSOs"). ISOs may be granted only to employees. NSOs may be granted to employees, consultants and directors. Stock options under the Plan may be granted with a term of up to ten years and at prices no less than fair market value for ISOs and no less than 85% of the fair market value for NSOs. Stock options granted generally vest over one to three years.

The following table summarizes the outstanding stock options under the Plan for the years ended April 30, 2012 and 2011:

	Outstanding Options		
	Number of Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Balances, at April 30, 2010	585,172		
Options granted	60,345	$ 2.49	
Options exercised	(1,193)	$ 1.69	$ 1,436(1)
Options cancelled	(129,253)	$ 4.22	
Balances, at April 30, 2011	515,071	$ 4.54	
Options granted	107,309	$ 1.94	
Options exercised	(7,333)	$ 1.96	$ 3,227(1)
Options cancelled	(263,224)	$ 4.19	
Balances, at April 30, 2012	351,823	$ 4.06	$ 3,673(2)

(1) Amounts represent the difference between the exercise price and fair value of Oxygen Biotherapeutics' stock at the time of exercise.
(2) Amount represents the difference between the exercise price and $1.78, the closing price of Oxygen Biotherapeutics' stock on April 30, 2012, as reported on The NASDAQ Capital Market, for all in-the-money options outstanding.

The Company issued 7,333 and 1,193 shares of Common Stock from the cashless exercise of 40,000 and 3,000 stock options for the years ended April 30, 2012 and 2011, respectively.

The following table summarizes all options outstanding as of April 30, 2012:

	Options Outstanding at April 30, 2012		Options Exercisable and Vested at April 30, 2012	
Exercise Price	Number of Options	Weighted Average Remaining Contractual Life (Years)	Number of Options	Weighted Average Exercise Price
$ 1.35 to $2.15	99,647	8.9	41,742	$ 1.91
$ 2.25 to $4.78	99,672	5.0	90,948	$ 3.24
$ 5.00 to $6.00	100,504	1.9	99,447	$ 5.58
$ 6.15 to $10.80	52,000	1.9	51,778	$ 6.99
	351,823	4.8	283,915	$ 4.55

The following table summarizes options outstanding that have vested and are expected to vest based on options outstanding as of April 30, 2012:

	Number of Option Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value (1)	Weighted Average Remaining Contractual Life (Years)
Vested	283,915	$ 4.55	$ 2,723	3.6
Vested and expected to vest	324,799	$ 4.23	$ 2,723	4.3

(1) Amount represents the difference between the exercise price and $1.78, the closing price of Oxygen Biotherapeutics' stock on April 30, 2012, as reported on The NASDAQ Capital Market, for all in-the-money options outstanding.

We chose the “straight-line” attribution method for allocating compensation costs of each stock option over the requisite service period using the Black-Scholes Option Pricing Model to calculate the grant date fair value.

We used the following assumptions to estimate the fair value of options granted under our stock option plans for the years ended April 30, 2012 and 2011:

	For the year ended April 30	
	2012	2011
Risk-free interest rate (weighted average)	1.79%	2.08%
Expected volatility (weighted average)	78.88%	83.89%
Expected term (in years)	7	7
Expected dividend yield	0.00%	0.00%

Risk-Free Interest Rate	The risk-free interest rate assumption was based on U.S. Treasury instruments with a term that is consistent with the expected term of our stock options.
Expected Volatility	The expected stock price volatility for our common stock was determined by examining the historical volatility and trading history for our common stock over a term consistent with the expected term of our options.
Expected Term	The expected term of stock options represents the weighted average period the stock options are expected to remain outstanding. It was calculated based on the historical experience that we have had with our stock option grants.
Expected Dividend Yield	The expected dividend yield of 0% is based on our history and expectation of dividend payouts. We have not paid and do not anticipate paying any dividends in the near future.
Forfeitures	As stock-based compensation expense recognized in the statement of operations for the years ended 2012 and 2011 is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. ASC 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures were estimated based on our historical experience.

The weighted-average grant-date fair value of options granted during the years ended April 30, 2012 and 2011 was $1.94 and $2.49, respectively.

As of April 30, 2012, there were unrecognized compensation costs of approximately $71,000 related to unvested stock option awards that will be recognized on a straight-line basis over the weighted average remaining vesting period of 0.97 years.

Restricted Stock Grants

The following table summarizes the restricted stock grants under the Plan for the year ended April 30, 2012:

	Outstanding Restricted Stock Grants	
	Number of Shares	Weighted Average Grant Date Fair Value
Balances, at April 30, 2011	-	
Restricted stock granted	209,461	$ 2.07
Restricted stock vested	(32,022)	$ 2.08
Restricted stock cancelled	(17,301)	$ 2.00
Restricted stock forfeited	(124,043)	$ 2.04
Balances, at April 30, 2012	36,095	$ 2.19

For the year ended April 30, 2012, the Company recorded $167,664 as compensation expense for these restricted stock grants. As of April 30, 2012, there were unrecognized compensation costs of approximately $28,169 related to the non-vested restricted stock grants that will be recognized on a straight-line basis over the remaining vesting period.

Other Stock Options

In the past, the Company issued options outside the 1999 Amended Stock Plan. These options were granted to outside consultants and directors and had exercise prices ranging between $3.68 and $4.50 with 3 to 10 year terms. During the year ended April 30, 2011, a holder of 3,333 non-qualified options exercised the option using the cashless exercise provision in the option contract. The Company issued 825 shares of common stock and cancelled the remaining 2,508 option shares. In the third quarter of fiscal 2012, the remaining 266,667 non-qualified options were cancelled. As of April 30, 2012, there were no non-qualified options outstanding.

The Company issued 0 and 825 shares of Common Stock from the cashless exercise of 3,333 stock options for the years ended April 30, 2012 and 2011, respectively.

Other Issuances of Common Stock

During the years ended April 30, 2012 and 2011, the Company issued 0 and 20,868, respectively, shares of unregistered common stock as compensation to its officers. These shares had a fair value at the grant date of $0 and $59,409, respectively.

All of the securities described above were issued in reliance on the exemption from registration set forth in Section 4(2) of the Securities Act of 1933.

NOTE I—COMMITMENTS AND CONTINGENCIES

Operating Leases

The Company leases its laboratory space under an operating lease that includes fixed annual increases and expires in July 2015. The Company leases its office space under an operating lease that includes fixed annual increases and expires in February 2016. Total rent expense was $286,536 and $343,129 for the year ended April 30, 2012 and 2011, respectively.

The future minimum payments for the long-term, non-cancelable lease are as follows:

Year ending April 30,	
2013	$ 276,909
2014	280,074
2015	283,299
2016	137,949
	$ 978,231

The Company sublets a portion of its lab facility in California to an unrelated third party. For the years ended April 30, 2012 and 2011, the Company recorded $21,320 and $54,953, respectively, as other income for the rents received under the sublease agreement.

Agreement with Virginia Commonwealth University

In May 2008 the Company entered into a license agreement with Virginia Commonwealth University ("Licensor", "VCU") whereby it obtained a worldwide, exclusive license to valid claims under three of the Licensor's patent applications that relate to methods for non-pulmonary delivery of oxygen to tissue and the products based on those valid claims used or useful for therapeutic and diagnostic applications in humans and animals. The license includes the right to sub-license to third parties. The term of the agreement is the life of the patents covered by the patent applications unless the Company elects to terminate the agreement prior to patent expiration. Under the agreement the Company has an obligation to diligently pursue product development and pursue, at its own expense, prosecution of the patent applications covered by the agreement. As part of the agreement, the Company is required to pay to VCU nonrefundable payments upon achieving development and regulatory milestones. As of April 30, 2012, the Company has not met any of the developmental milestones.

The agreement with VCU also requires the Company to pay royalties to VCU at specified rates based on annual net sales derived from the licensed technology. Pursuant to the agreement, the Company must make minimum annual royalty payments to VCU totaling $70,000 as long as the agreement is in force. These payments are fully creditable against royalty payments due for sales and sublicense revenue earned during the fiscal year as described above. This fee is recorded as an other current asset and is amortized over the fiscal year. Amortization expense was $70,000 for the year ended April 30, 2012 and 2011.

Exfluor Manufacturing Agreement

The Company entered into a Supply Agreement with Exfluor for the manufacturing and supply of FtBu. Under the terms of the Agreement, Exfluor is to supply FtBu exclusively to the Company, and no other party. The fee for this exclusivity is a non-refundable, non-creditable fee of $25,000 each quarter for the term of the Agreement. The term of the Agreement is three years, beginning from January 1, 2010. The process of manufacturing FtBu is a trade secret owned by Exfluor. Therefore, the Agreement also contains a provision requiring Exfluor to maintain documentation of the entire manufacturing process in an Escrow Account, to be released to the Company only upon the occurrence of a triggering event, which includes dissolution, acquisition by another company who is not a successor, bankruptcy or creditors take action to secure rights against the manufacturing technology to satisfy a financial obligation.

As part of the Company's overall drug development plan to attain cGMP compliant product suitable for advanced clinical trials, and subsequent commercial distribution should regulatory market approval be achieved, the Supply Agreement with Exfluor was terminated on April 13, 2012 and a new Supply Agreement was entered into with Fluoromed LLC, a sister-company of Exfluor with the capabilities to manufacture FtBu at the higher quality level needed at this stage of development.

The Supply Agreement with Fluoromed was effective February 23, 2012 and contains terms similar to those of the Exfluor agreement, with the exception of mandatory quarterly payments. The agreement has a three year term, maintains FtBu supply exclusively to the Company and contains provisions requiring Fluoromed to secure a non-exclusive, worldwide licensing right to the technology owned by Exfluor for the manufacture of FtBu, which license is to remain in effect for the duration of the Supply Agreement and is to include a provision allowing the technology to be held in an Escrow account, along with Fluoromed's technology and processes, to be released to the Company only upon the occurrence of a triggering event, which includes dissolution, acquisition by another company who is not a successor, bankruptcy or creditors take action to secure rights against the manufacturing technology to satisfy a financial obligation. One of the terms of Exfluor's termination agreement included a provision requiring them to issue such a license to Fluoromed.

Litigation

The Company is subject to litigation in the normal course of business, none of which management believes will have a material adverse effect on the Company's financial statements.

On August 30, 2011, Tenor Opportunity Master Fund Ltd., Aria Opportunity Fund, Ltd., and Parsoon Opportunity Fund, Ltd (collectively, "Tenor") filed a lawsuit in the United States District Court for the Southern District of New York alleging that a right of first offer held by Tenor was breached in connection with the Company's June 2011 financing. The complaint seeks compensatory damages, attorneys' fees and costs. Discovery has been completed and motions for summary judgment from both sides were filed, Plaintiffs filed on the matter of breach the Company filed on the matter of damages. On July 11, 2012 the court entered an order on both summary judgment motions. The court found in favor of Plaintiff's motion, holding that the Company did breach the agreement. The court did not find in favor of the Company's motion regarding damages. The matter will now move to trial for a jury to determine what, if any, damages Plaintiff's suffered from the Company's breach of the agreement.

Registration Requirement

During the fiscal year ended April 30, 2008, the Company issued warrants as part of a convertible note offering. These warrants were issued with a requirement that the Company file a registration statement with the SEC to register the underlying shares, and that it be declared effective on or before January 9, 2009. In the event that the Company does not have an effective registration statement as of that date, or if at some future date the registration ceases to be effective, then the Company is obligated to pay liquidated damages to each holder in the amount of 1% of the aggregate market value of the stock, as measured on January 9, 2009 or at the date the registration statement ceases to be effective. As an additional remedy for non-registration of the shares, the holders would also receive the option of a cashless exercise of their warrant or conversion shares. As of April 30, 2012, approximately 126,000 of these warrants are subject to the registration requirement.

ASC 825-20, Financial Instruments, Registration Payment Arrangements, provides guidance to proper recognition, measurement, and classification of certain freestanding financial instruments that are indexed to, and potentially settled in, any entity's own stock. ASC 825-20-25 specifies that the contingent obligation to make future payments or otherwise transfer consideration under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument or other agreement, should be separately recognized and measured in accordance with ASC 450, Accounting for Contingencies. The Company has accounted for these warrants as equity instruments in the accompanying financial statements. The Company does not believe the registration payments are probable, and as such, has not recorded any amounts with respect to the separately measured registration rights agreement.

Contingent Liabilities Related to Internal Revenue Code Section 409A

In November, 2010, management conducted an independent review of certain option grants made by the Company between February 1998 and April 2009. This voluntary review was not in response to any governmental investigation. During the course of the Company's review, management identified certain options granted in prior years that may have been non-compliant with Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "IRC"), including options granted with an exercise price below fair market value on the date of grant and options that were modified such that they may have become non-compliant with Section 409A.

In February 2011, after management conducted a preliminary, limited scope review of certain of the Company's stock option granting practices, the Audit Committee commenced a voluntary, independent investigation of the Company's historical stock option granting practices and related accounting during the period from February 1998 through April 2009. The Company's outside legal counsel assisted the Audit Committee in this investigation. As of April 30, 2012, none of the Company's current officers or directors has exercised any of the potentially non-compliant options. The primary adverse tax consequence of Section 409A non-compliance is that the holders of non-compliant options are taxed on the value of such options as they vest, and annually thereafter until they are exercised. In addition to ordinary income taxes, holders of non-compliant options are subject to a 20% penalty tax under Section 409A (and, as applicable, similar excise taxes under state laws). Because virtually all holders of stock options granted by the Company were not involved in or aware that the pricing and/or modification of their options raised these issues, the Company intends to take actions to address certain of the adverse tax consequences that may apply to these holders. In addition, on March 17, 2011 the Company entered into indemnification agreements with its executive officers that indemnify those officers from potential Section 409A tax liabilities arising from their prior option awards.

As of April 30, 2012, the Company has accrued approximately $550,000, which represents the Company's best estimate of the potential liability, in other current liabilities for the contingent liability.

NOTE J—401(k) BENEFIT PLAN

The Company sponsors a 401(k) Retirement Savings Plan (the Plan) for all eligible employees. Full-time employees over the age of 18 are eligible to participate in the Plan after 90 days of continuous employment. Participants may elect to defer earnings into the Plan up to the annual IRS limits and the Company provides a matching contribution up to 5% of the participants' annual salary in accordance with the Plan documents. The Plan is managed by a third-party trustee. For the periods ended April 30, 2012 and 2011, the Company recorded $52,217 and $71,517 respectively, for matching contributions expense.

NOTE K—INCOME TAXES

The Company has not recorded any income tax expense for the periods ended April 30, 2012 and 2011 due to its history of operating losses.

The reconciliation of income tax expenses (benefit) at the statutory federal income tax rate of 34% to net income tax expenses (benefit) for the years ended April 30, 2012 and 2011 is as follows:

	April 30,	
	2012	2011
U.S. federal taxes (benefit) at statutory rate	$ (5,342,219)	$ (3,552,421)
Interest expense	1,458,660	-
Stock compensation expense	22,227	43,255
Others	(95,003)	270,400
Change in valuation allowance	3,956,335	3,238,766
	-	-

The tax effects of temporary differences and carry forwards that give rise to significant portions of the deferred tax assets are as follows:

	April 30,	
Deferred tax assets	2012	2011
Net operating loss carryforwards	$ 24,172,571	$ 21,101,227
Interest	1,511,360	-
Accruals and others	244,207	298,026
Depreciation and amortization	(32,473)	(15,773)
Total deferred tax assets	25,895,665	21,383,480
Less: Valuation allowance	(25,895,665)	(21,383,480)
Net deferred tax assets	$ -	$ -

At April 30, 2012 and 2011 the Company had net operating loss carry forwards of approximately $71.0 million and $62.1 million available to reduce future taxable income, if any, for Federal and California state income tax purposes, respectively. The net operating loss carry forwards expire between 2013 and 2028, and valuation allowances have been provided.

Utilization of the net operating loss carry forward may be subject to an annual limitation due to the ownership percentage change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. The annual limitations may result in the expiration of the net operating loss before utilization.

The Company adopted ASC 740-10 on May 1, 2007. As of April 30, 2012, it had no unrecognized tax benefits and does not expect any material change during the next year. As of April 30, 2012, the Company has not recorded any interest or penalties under this pronouncement.

Management has evaluated all other tax positions that could have a significant effect on the financial statements and determined the Company had no uncertain income tax positions at April 30, 2012.

The Company files U.S. and state income tax returns with varying statutes of limitations. The tax years 1998 forward remain open to examination due to the carryover of unused net operating losses or tax credits.

NOTE L—SUBSEQUENT EVENTS

Series A Convertible Preferred Stock

On June 15, 2012 the Company sold 2,500 units for net proceeds of approximately $2.3 million. Each unit sold consisted of (i) one share of the Company's Preferred Stock and (ii) a warrant representing the right to purchase 225.2 shares of Common Stock (the "SPA Warrants"), at a price of $1,000 per unit, less issuance costs. The shares of Preferred Stock were immediately convertible and the SPA Warrants are exercisable beginning on the one-year anniversary of the closing date.

On June 15, 2012, the Company elected to make the scheduled July 16, 2012 installment payment in shares of Common Stock and on that date issued 424,860 shares of Common Stock under the pre-delivery procedures described in the certificate of designation. On July 16, 2012, the Company issued an additional 76,934 shares of Common Stock based upon the comparison of the market price on June 15, 2012 and the market price on July 16, 2012. The Company expects to report interest expense related to these conversions of approximately $110,000 in the first quarter of 2013. The interest expense is calculated as the difference between the fair value of the preferred shares and the fair value of the Common Stock on the date of the conversion.

Additionally, on July 13, 2012, the Company elected to make the scheduled August 15, 2012 installment payment in shares of Common Stock and on that date issued 481,496 shares of Common Stock. The Company expects to make subsequent scheduled payments in shares of Common Stock to the extent the Preferred Stock has not been voluntarily converted by the holders.

The scheduled conversions and actual activity for the Preferred Stock as of July 20, 2012 is shown in the table below:

Installement Date	Pre-delivery Date	Preferred Shares Redeemedable	Less: Preferred Shares Redeemed / Converted	Balance of Preferred Stock
7/16/2012	6/15/2012	667	(667)	-
8/15/2012	7/13/2012	667	-	667
9/17/2012	8/14/2012	667	-	667
10/15/2012	9/12/2012	500	-	500
		2,500	(667)	1,833

ITEM 9—CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A—CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our disclosure controls and procedures, as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, are designed to ensure that information required to be disclosed in reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in rules and forms adopted by the Securities and Exchange Commission, or SEC, and that such information is accumulated and communicated to management, including the Chief Executive Officer and the Chief Financial Officer, to allow timely decisions regarding required disclosures.

Management, with the participation of our Interim Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Form 10-K. Based on such evaluation, our Interim Chief Executive Officer and our Chief Financial Officer concluded that, as of April 30, 2012, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Controls over Financial Reporting

From time to time, we may review and make changes to our internal control over financial reporting that are intended to enhance the effectiveness of our internal control over financial reporting and which do not have a material effect on our overall internal control over financial reporting. During the three months ended April 30, 2012, we made no changes to our internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, that we believe materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting, as defined in rules promulgated under the Exchange Act, is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer and affected by our Board of Directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Internal control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and our Board of Directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process, and it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

Our management assessed the effectiveness of our internal control over financial reporting as of April 30, 2012. In making its assessment, management used the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO. Based on its assessment, management has concluded that our internal control over financial reporting was effective as of April 30, 2012.

ITEM 9B—OTHER INFORMATION

There is no information to report under this item for the quarter ended April 30, 2012.

PART III

ITEM 10—DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2012 Annual Meeting of Stockholders.

ITEM 11—EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement for our 2012 Annual Meeting of Stockholders.

ITEM 12—SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated by reference to our Proxy Statement for our 2012 Annual Meeting of Stockholders.

ITEM 13—CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2012 Annual Meeting of Stockholders.

ITEM 14—PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement for our 2012 Annual Meeting of Stockholders.

PART IV

ITEM 15—EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(A)(1) The financial statements and information listed below are included in this report in Part II, Item 8.

- Reports of Independent Registered Public Accounting Firm.
- Balance Sheets as of April 30, 2012 and 2011.
- Statements of Operations for each of the two years ended April 30, 2012 and April 30, 2011 and for the period May 26, 1967 (Date of Inception) to April 30, 2012.
- Statements of Stockholders' Equity (Deficit) for each of the two years ended April 30, 2012 and April 30, 2011 and for the period May 26, 1967 (Date of Inception) to April 30, 2012.
- Statements of Cash Flows for each of the two years ended April 30, 2012 and April 30, 2011 and for the period May 26, 1967 (Date of Inception) to April 30, 2012.
- Notes to the Financial Statements.

(A)(2) No schedules have been included because they are not applicable or the required information is shown in our financial statements or our notes thereto.

(A)(3) The exhibits required by Item 601 of Regulation S-K are listed in the Exhibit Index immediately following the signature pages to this report.

SIGNATURES

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

OXYGEN BIOTHERAPEUTICS, INC.

Date: July 24, 2012

By: /s/ Michael B. Jebsen
Michael B. Jebsen
Chief Financial Officer and Interim Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Michael B. Jebsen, his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name	Title	Date
/s/ Michael B. Jebsen Michael B. Jebsen	Chief Financial Officer Interim Chief Executive Officer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	July 24, 2012
/s/ Ronald R. Blanck Ronald R. Blanck, DO	Director	July 24, 2012
/s/ Gregory Pepin Gregory Pepin	Director	July 24, 2012
/s/ William A. Chatfield William A. Chatfield	Director	July 24, 2012
/s/ Chris A. Rallis Chris A. Rallis	Director	July 24, 2012
/s/ Anthony DiTonno Anthony DiTonno	Director	July 24, 2012

EXHIBIT INDEX

Exhibit No.	Exhibits Required by Item 601 of Regulation S-K
2.1	Agreement and Plan of Merger dated April 28, 2008 (1)
3.1	Certificate of Incorporation (1)
3.2	Certificate of Amendment of the Certificate of Incorporation (14)
3.3	Certificate of Designations*
3.4	Amended and Restated Bylaws (22)
4.1	Specimen Stock Certificate (19)
10.1	Agreement with Leland C. Clark, Jr., Ph.D. dated November 20, 1992 with amendments, Assignment of Intellectual Property/ Employment (2)
10.2	Agreement between the Registrant and Keith R. Watson, Ph.D. Assignment of Invention (2)
10.3	Children's Hospital Research Foundation License Agreement dated February 28, 2001 (2)
10.4	Exclusive License Agreement with Virginia Commonwealth University dated May 22, 2008 (9)
10.5	Amendment no. 1 to the Exclusive License Agreement with Virginia Commonwealth University Intellectual Property Foundation (10)
10.6	Amendment no. 2 to the Exclusive License Agreement with Virginia Commonwealth University Intellectual Property Foundation (10)
10.7	Agreement with Hospira to manufacture Oxycyte (8)
10.8	Termination Agreement between the Company and Hospira, dated August 30, 2011 (23)

10.9	Exclusive Supply Agreement with Exfluor dated November 12, 2009 (10)
10.10	Master Agreement with Dermacyte Switzerland (18)
10.11	Amendment no. 1 to Master Agreement with Dermacyte Switzerland (18)
10.12	Form of Option issued to Executive Officers and Directors (2)
10.13	Form of Option issued to Employees (2)
10.14	Restricted Stock Award Agreement (22)
10.15	Form of Warrant issued to Unsecured Note Holders 2006-2007 (3)
10.16	Form of Convertible Note – 2008 (4)
10.17	Form of Warrant issued to Convertible Note Holders (4)
10.18	Form of Purchase Agreement – US Purchase (without exhibits, which are included as exhibits 10.16 and 10.17, above) (4)
10.19	Form of Purchase Agreement – Non-US Purchase (without exhibits, which are included as exhibits 10.16 and 10.17, above) (4)
10.20	Form of Purchase Agreement – US Note Exchange (without exhibits, which are included as exhibits 10.16 and 10.17, above) (4)
10.21	Form of Purchase Agreement – Non-US Note Exchange (without exhibits, which are included as exhibits 10.16 and 10.17, above) (4)
10.22	Form of Warrant issued to Financing Consultants (5)
10.23	1999 Amended Stock Plan (amended 2008) (5)
10.24	Employment Agreement with Chris J. Stern dated February 1, 2009 (12)

10.25	Amended and Restated Employment Agreement with Chris J. Stern dated May 13, 2011 (20)
10.26	Business Consultant Agreement with Institute for Efficient Management, Inc., as amended March 26, 2008 (5)
10.27	Engagement and Consulting Agreement with Bruce Spiess (5)
10.28	Engagement and Consulting Agreement with Gerald L. Klein (5)
10.29	Employment Agreement with Gerald L. Klein dated May 13, 2011 (20)
10.30	Business Consultant Agreement with Edward Sitnik (8)
10.31	Business Consultant Agreement with J. Melville Engle (8)
10.32	Employment Agreement with Richard Kiral, restated February 1, 2009 (8)
10.33	Resignation of Employment and Consulting Agreement with Richard Kiral (20)
10.34	Employment Agreement with Michael B. Jebsen dated December 1, 2010 (16)
10.35	Amended and Restated Employment Agreement with Michael B. Jebsen dated May 19, 2011 (20)
10.36	Form of Indemnification Agreement (20)
10.37	Description of Non-Employee Director Compensation (25)
10.38	Securities Purchase Agreement (including exhibits) between Oxygen Biotherapeutics and Vatea Fund, Segregated Portfolio dated June 8, 2009 (6)
10.39	Amendment no. 1 to the Securities Purchase Agreement between Oxygen Biotherapeutics and Vatea Fund, Segregated Portfolio (11)
10.40	Amendment no. 2 to the Securities Purchase Agreement between Oxygen Biotherapeutics and Vatea Fund, Segregated Portfolio (12)

10.41	Amendment no. 3 to the Securities Purchase Agreement between Oxygen Biotherapeutics and Vatea Fund, Segregated Portfolio (23)
10.42	Form of Exchange Agreement dated July 20, 2009 (7)
10.43	Waiver—Convertible Note (10)
10.44	Amendment—Common Stock Purchase Warrant (10)
10.45	Form of Warrant for May 2010 offering (13)
10.46	Form of Subscription Agreement for May 2010 offering (13)
10.47	Warrant issued to Blaise Group International, Inc. (14)
10.48	Note Purchase Agreement between Oxygen Biotherapeutics and JP SPC 1 Vatea, Segregated Portfolio (15)
10.49	Form of Promissory Note under Note Purchase Agreement between Oxygen Biotherapeutics and JP SPC 1 Vatea, Segregated Portfolio (15)
10.50	First Amendment to Note Purchase Agreement between Oxygen Biotherapeutics and JP SPC 1 Vatea, Segregated Portfolio (17)
10.51	Lease Agreement for North Carolina corporate office (18)
10.52	Standard Industrial Lease relating to OBI's California facility (12)
10.53	Task Order between the Company and NextPharma, dated November 15, 2011 (23)
10.54	Form of Convertible Note for July 2011 offering (included in exhibit 10.56)
10.55	Form of Warrant for July 2011 offering (included in exhibit 10.56)
10.56	Form of Convertible Note and Warrant Purchase Agreement for July 2011 offering (21)

10.57	Placement Agency Agreement, dated December 8, 2011, between Oxygen Biotherapeutics, Inc. and William Blair & Company, L.L.C., as placement agent (24)
10.58	Form of Warrant for December 2011 offering (24)
10.59	Form of Securities Purchase Agreement for December 2011 offering (24)
10.60	Form of Amendment Agreement for December 2011 offering (26)
10.61	Form of Lock-up Agreement for December 2011 offering (24)
10.62	Fluoromed Supply Agreement*
23.1	Consent of Independent Registered Accounting Firm*
31.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350*
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(1) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on June 30, 2008, and are incorporated herein by this reference.
(2) These documents were filed as exhibits to the annual report on Form 10-K filed by Oxygen Biotherapeutics with the SEC on August 13, 2004, and are incorporated herein by this reference.
(3) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on September 6, 2006, and are incorporated herein by this reference.
(4) These documents were filed as exhibits to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on March 21, 2008, and are incorporated herein by this reference.
(5) These documents were filed as exhibits to the annual report on Form 10-K filed by Oxygen Biotherapeutics with the SEC on August 13, 2008, and are incorporated herein by this reference.
(6) This document was filed as an exhibit to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on June 8, 2009, and is incorporated herein by this reference.
(7) This document was filed as an exhibit to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on July 21, 2009, and is incorporated herein by this reference.
(8) These documents were filed as exhibits to the annual report on Form 10-K filed by Oxygen Biotherapeutics with the SEC on August 12, 2009, and are incorporated herein by this reference.
(9) This document was filed as an exhibit to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on September 22, 2008, and is incorporated herein by this reference.
(10) These documents were filed as exhibits to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on March 19, 2010, and are incorporated herein by this reference.
(11) This document was filed as an exhibit to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on September 2, 2009, and is incorporated herein by this reference.
(12) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on April 28, 2010, and are incorporated herein by this reference.
(13) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on May 4, 2010, and are incorporated herein by this reference.
(14) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on November 13, 2009, and are incorporated herein by reference.
(15) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on October 13, 2010, and are incorporated herein by this reference.
(16) These documents were filed as exhibits to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on December 9, 2010, and are incorporated herein by this reference.
(17) This document was filed as an exhibit to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on December 30, 2010, and is incorporated herein by this reference.
(18) These documents were filed as exhibits to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on March 21, 2011, and are incorporated herein by this reference.
(19) These documents were filed as exhibits to the annual report on Form 10-K filed by Oxygen Biotherapeutics with the SEC on July 23, 2010, and are incorporated herein by this reference.
(20) This document was filed as an exhibit to the annual report on Form 10-K filed by Oxygen Biotherapeutics with the SEC on July 15, 2011, and is incorporated herein by this reference.
(21) This document was filed as an exhibit to the current report on Form 8-K/A filed by Oxygen Biotherapeutics with the SEC on July 1, 2011, and is incorporated herein by this reference.
(22) This document was filed as an exhibit to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on December 15, 2011, and is incorporated herein by this reference.
(23) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on November 16, 2011, and are incorporated herein by this reference.
(24) These documents were filed as exhibits to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on December 9, 2011, and are incorporated herein by this reference.
(25) This document was filed as an exhibit to the quarterly report on Form 10-Q filed by Oxygen Biotherapeutics with the SEC on March 15, 2012, and is incorporated herein by this reference.
(26) This document was filed as an exhibit to the current report on Form 8-K filed by Oxygen Biotherapeutics with the SEC on June 15, 2012, and is incorporated herein by this reference.

* Filed herewith.

** Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files in Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

CERTIFICATE OF DESIGNATIONS, PREFERENCES
AND RIGHTS OF SERIES A CONVERTIBLE PREFERRED STOCK
OF
OXYGEN BIOTHERAPEUTICS, INC.

Oxygen Biotherapeutics, Inc. (the "**Company**"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify that, pursuant to authority conferred upon the Board of Directors of the Company by the Certificate of Incorporation, as amended, of the Company, and pursuant to the provisions of the DGCL, the Board of Directors of the Company adopted resolutions (i) designating a series of the Company's previously authorized preferred stock, par value $0.0001 per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of seven thousand and five hundred (7,500) shares of Series A Convertible Preferred Stock of the Company, as follows:

RESOLVED, that the Company is authorized to issue seven thousand and five hundred (7,500) shares of Series A Convertible Preferred Stock, par value $0.0001 per share (the "**Preferred Shares**"), which shall have the following powers, designations, preferences and other special rights:

(1) Dividends.

(a) The holders of Preferred Shares (each, a "**Holder**" and collectively, the "**Holders**"), shall be entitled to receive dividends ("**Dividends**") payable, subject to the conditions and other terms hereof, in shares of Common Stock or cash on the Stated Value (as defined below) of such Preferred Share, which Dividends for the avoidance of doubt shall be calculated on such Preferred Shares without giving effect to any reduction for the payment of any Installment Amount payable on such date, at the Dividend Rate (as defined below), which shall be cumulative. Dividends on the Preferred Shares shall commence accruing on the Initial Issuance Date (and, with respect to Preferred Shares issued following the Initial Issuance Date, on the Subsequent Issuance Date relating to such Preferred Shares) and shall be computed on the basis of a 365-day year and actual days elapsed. Dividends shall be payable in arrears on each Installment Date (each, a "**Dividend Date**") with the first Dividend Date being January 12, 2012, and the last Dividend Date being the Maturity Date. If a Dividend Date is not a Business Day (as defined below), then the Dividend shall be due and payable on the Business Day immediately following such Dividend Date.

(b) Dividends shall be payable on each Dividend Date, to the record holders of the Preferred Shares on the Dividend Notice Due Date prior to the applicable Dividend Date, in shares of Common Stock ("**Dividend Shares**") so long as there has been no Equity Conditions Failure; provided however, that the Company may, at its option following notice to each Holder, pay Dividends on any Dividend Date in cash ("**Cash Dividends**") or in a combination of Cash Dividends and, so long as there has been no Equity Conditions Failure, Dividend Shares. The Company shall deliver a written notice (each, a "**Dividend Election Notice**") to each holder of the Preferred Shares on the Dividend Notice Due Date (the date such notice is delivered to all of the holders, the "**Dividend Notice Date**") which notice (1) either (A) confirms that Dividends to be paid on such Dividend Date shall be paid entirely in Dividend Shares or (B) elects to pay Dividends as Cash Dividends or a combination of Cash Dividends and Dividend Shares and specifies the amount of Dividends that shall be paid as Cash Dividends and the amount of Dividends, if any, that shall be paid in Dividend Shares and (2) unless the Company has elected to pay Dividends solely as Cash Dividends, certifies that there has been no Equity Conditions Failure as of such time. If any portion of Dividends for a particular Dividend Date shall be paid in Dividend Shares, then (I) on the Dividend Pre-Payment Date, the Company shall pay to the Holder, in accordance with Section 1(c), a number of shares of Common Stock equal to (x) the amount of Dividends payable on the applicable Dividend Date divided by (y) the applicable Initial Dividend Conversion Price (the "**Pre-Dividend Shares**") and (II) on the Dividend Date (the "**Dividend Settlement Date**"), the Company shall deliver a notice setting forth the calculation of the Dividend Balance Shares (and the calculation of the component parts of such calculation) and pay to the Holder, in accordance with Section 1(c), a number of shares of Common Stock equal to any Dividend Balance Shares (if such number is greater than zero (0)). Dividends to be paid on a Dividend Pre-Payment Date or on a Dividend Date in Dividend Shares shall be paid in a number of fully paid and nonassessable shares of Common Stock (rounded down to the nearest whole share). No fractional shares of Common Stock shall be issued upon payment of Dividends. In lieu of any fractional shares to which a Holder would otherwise be entitled, the Company shall pay such amount in cash. If the Equity Conditions are not satisfied as of the Dividend Notice Date, then unless the Company has elected to pay such Dividends in cash, the Dividend Election Notice shall indicate that unless the Holder waives the Equity Conditions, the Dividends shall be paid in cash.

(c) When any Dividend Shares are to be paid on a Dividend Pre-Payment Date or a Dividend Settlement Date, as applicable, then the Company shall (i) (A) provided that the Company's transfer agent (the "**Transfer Agent**") is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program and such action is not prohibited by applicable law or regulation or any applicable policy of DTC, credit such aggregate number of Dividend Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("DWAC") system, or (B) if the foregoing shall not apply, issue and dispatch by overnight courier on the applicable Dividend Pre-Payment Date or Dividend Settlement Date, as the case may be, to the address set forth in the register maintained by the Company for such purpose or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Dividend Pre-Payment Date or Dividend Settlement Date, a certificate, registered in the name of the Holder or its designee, for the number of Dividend Shares to which the Holder shall be entitled and (ii) with respect to each Dividend Date, pay to the Holder, in cash by wire transfer of immediately available funds, the amount of any Cash Dividends to such account designated in writing by the Holder. Notwithstanding the foregoing, the Company shall not be entitled to pay Dividends in Dividend Shares and shall be required to pay all such Dividends in cash as Cash Dividends on the applicable Dividend Pre-Payment Date or Dividend Settlement Date if, unless consented to in writing by the Holder, there has been an Equity Conditions Failure. If a Triggering Event or Equity Conditions Failure occurs during the period from the Dividend Pre-Payment Date through the Dividend Settlement Date, then on the Dividend Settlement Date, at the Holder's option, either (1) the Holder may require the Company to pay the Dividend due on the applicable Dividend Settlement Date as Cash Dividends (including any Dividends represented by Pre-Dividend Shares) and, in conjunction with receipt of such cash payment, shall return the applicable number of Pre-Dividend Shares or (2) the Company shall pay an additional amount to the Holder as Cash Dividends equal to the Dividend Balance Amount.

(2) Conversion of Preferred Shares. Preferred Shares shall be convertible into shares of the Company's Common Stock, par value $0.0001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 2.

(a) Certain Defined Terms. For purposes of this Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of Oxygen Biotherapeutics, Inc. (this "**Certificate of Designations**") the following terms shall have the following meanings:

(i) "**Additional Amount**" means, on a per Preferred Share basis, the product of (A) the result of the following formula: (Dividend Rate)(N/365) and (B) the Stated Value.

(ii) "**Approved Stock Plan**" means any employee benefit plan, agreement or arrangement which has been approved by the Board of Directors of the Company, pursuant to which the Company's securities may be issued to any employee, officer or director for services provided to the Company.

(iii) "**Bloomberg**" means Bloomberg Financial Markets.

(iv) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(v) "**Capital Stock**" means: (A) in the case of a corporation, corporate stock; (B) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (C) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership or limited liability company interests; and (D) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

(vi) "**Change of Control**" means any Fundamental Transaction other than (A) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company.

(vii) **"Closing Bid Price"** and **"Closing Sale Price"** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 2(d)(iii). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(viii) "**Company Conversion Measuring Period**" means the twenty (20) consecutive Trading Days ending on the Trading Day immediately prior to the applicable Installment Date.

(ix) **"Company Conversion Price"** means as of any date of determination, that price which shall be the lower of (i) the applicable Conversion Price and (ii) that price computed as 90% of the arithmetic average of the five (5) lowest VWAPs during the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable Installment Settlement Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Company Conversion Measuring Period.

(x) **"Contingent Obligation"** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(xi) "**Conversion Amount**" means the sum of (A) the Additional Amount and (B) the Stated Value.

(xii) "**Conversion Price**" means $2.22, subject to adjustment as provided herein.

(xiii) **"Conversion Share Ratio"** means, as to any Installment Date, the quotient of (i) the number of Pre-Installment Conversion Shares delivered in connection with such Installment Date divided by (ii) the number of Post-Installment Conversion Shares relating to such Installment Date.

(xiv) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(xv) "**Dividend Balance Amount**" means for any Dividend Date, an amount equal to (i) the Dividends due on such Dividend Date minus (ii) an amount equal to (A) the Dividends due on such Dividend Date multiplied by (B) the Dividend Share Ratio.

(xvi) "**Dividend Balance Shares**" means, for any Dividend Date, a number of shares of Common Stock equal to (i) the Post-Dividend Shares with respect to such Dividend Date minus (ii) the amount of any Pre-Dividend Shares delivered with respect to such Dividend Date; provided that in the event that the amount of Pre-Dividend Shares exceeds the Post-Dividend Shares for such date, the Dividend Balance Shares shall equal zero (0).

(xvii) "**Dividend Conversion Price**" means, with respect to any Dividend Date, the arithmetic average of the five (5) lowest VWAPs during the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable Dividend Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction that proportionately decreases or increases the Common Stock during the applicable Dividend Measuring Period.

(xviii) "**Dividend Measuring Period**" means the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable Dividend Date.

(xix) "**Dividend Notice Due Date**" means the twenty-sixth (26th) Trading Day (disregarding, solely for purposes of determining timely compliance with the applicable notice requirements, any suspensions or closures of trading which may occur after the Dividend Notice Due Date) prior to the applicable Dividend Date; provided that the first Dividend Notice Due Date shall be the Initial Issuance Date or with respect to Preferred Shares issued following the Initial Issuance Date, the applicable Subsequent Issuance Date.

(xx) "**Dividend Pre-Payment Date**" means the twenty-third (23rd) Trading Day (disregarding, solely for purposes of determining timely compliance with the delivery of Pre-Dividend Shares, any suspensions or closures of trading which may occur after the Dividend Pre-Payment Date) prior to the applicable Dividend Date; provided that the first Dividend Pre-Payment Date shall be the Initial Issuance Date or, with respect to Preferred Shares issued following the Initial Issuance Date, the applicable Subsequent Issuance Date.

(xxi) "**Dividend Rate**" means (A) seven percent (7.0%) per annum and (B) for the period from and after the occurrence of a Triggering Event through such time that such Triggering Event is cured, fifteen percent (15%) per annum.

(xxii) "**Dividend Share Ratio**" means, as to any applicable date of determination, (i) the number of Pre-Dividend Shares delivered in connection with a Dividend Date *divided by* (ii) the number of Post-Dividend Shares relating to such Dividend Date.

(xxiii) "**Eligible Market**" means the Principal Market, The New York Stock Exchange, Inc., NYSE AMEX Equities, The NASDAQ Global Select Market, The NASDAQ Global Market, The NASDAQ Capital Market or the OTC Bulletin Board.

(xxiv) "**Equity Conditions**" means: (A) on each day during the period beginning on the later of (1) thirty (30) days prior to the applicable date of determination and (2) the Initial Issuance Date and ending on and including the applicable date of determination (the "**Equity Conditions Measuring Period**"), all shares of Common Stock issued and issuable upon conversion of the Preferred Shares, as Dividend Shares and upon exercise of the Warrants shall have been issued or, to the extent not yet issued, shall be issuable without restrictive legends and shall be eligible for sale without restriction or limitation and without the need for registration under any applicable federal or state securities laws; (B) on each day during the Equity Conditions Measuring Period, the Common Stock is designated for quotation on the Principal Market or an Eligible Market and shall not have been suspended from trading from all such exchanges or markets (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall proceedings for such delisting or suspension from any applicable exchanges or markets have been commenced, threatened (except as described in Form 8-K filed by the Company with the SEC on October 14, 2011) or pending either, in the case of such exchange or market, (1) in writing by such exchange or market or (2) by falling below the minimum listing maintenance requirements of such exchange or market, unless, in the case of clause (1) or (2) above, the Company shall meet all minimum listing conditions of one or more other Eligible Markets; (C) on each day during the Equity Conditions Measuring Period, the Company shall have delivered Common Stock upon conversion of the Preferred Shares to the Holders on a timely basis as set forth in Section 2(d)(ii) hereof; (D) any applicable shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating Section 8 hereof or the rules or regulations of the applicable Principal Market; (E) during the Equity Conditions Measuring Period, the Company shall not have failed to timely make any payments, which payments individually or in the aggregate exceed $25,000, within five (5) Business Days of when such payment is due pursuant to any Transaction Document; (F) during the Equity Conditions Measuring Period, there shall not have occurred either (1) the public announcement of a pending, proposed or intended Fundamental Transaction which has not been abandoned, terminated or consummated or (2) a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event; (G) the Company shall have no knowledge of any fact that would cause all shares of Common Stock issued and issuable upon conversion of the Preferred Shares, as Dividend Shares and upon exercise of the Warrants not to be eligible for sale without restriction or limitation and without the need for registration under any applicable federal or state securities laws; (H) the aggregate dollar trading value for the Common Stock during the 20 Trading Days prior to the applicable date of determination is in excess of $375,000; (I) the Company shall have been in compliance with and shall not have breached any provision, covenant, representation or warranty of any Transaction Document, except for purposes of this clause (I) (i) any breach explicitly excepted from any of clauses (A) through (H) described above, (ii) any failure by the Company to timely make any payments, whether in cash or shares of Common Stock, which payments individually or in the aggregate are less than or equal to $25,000, and (iii) any failure by the Company to timely deliver notice or take any other action, where the Company actually delivers such notice or takes such action within one (1) Business Day of the date due; and (J) during the Equity Conditions Measuring Period, the Company shall not have issued or agreed to issue, directly or indirectly, any shares of Common Stock, Options or any Convertible Securities other than Excluded Securities.

(xxv) **"Equity Conditions Failure"** means that on each Trading Day during the period from the date of delivery of any applicable notice hereunder through the applicable date of issuance or deemed issuance of any shares of Common Stock hereunder the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(xxvi) "**Excluded Securities**" means (i) any Common Stock issued or issuable or deemed to be issued in accordance with Section 2(f) hereof by the Company: (A) under any Approved Stock Plan; (B) in respect of a conversion or redemption of the Preferred Shares in accordance herewith; (C) as Dividend Shares hereunder; (D) upon the exercise of the Warrants; provided that if any Warrants are amended, modified or changed on or after the Subscription Date, the shares of Common Stock issued or issuable or deemed to be issued upon exercise of such Warrants will not be Excluded Securities solely for Holders that own Warrants that were not so amended, modified or changed; (E) upon conversion, exercise or exchange of any Options or Convertible Securities which are outstanding on the day immediately preceding the Subscription Date, provided that such issuance of Common Stock upon exercise of such Options or Convertible Securities is made pursuant to the terms of such Options or Convertible Securities in effect on the date immediately preceding the Subscription Date and such Options or Convertible Securities are not amended, modified or changed on or after the Subscription Date; and (F) as a stock split, stock dividend or other similar recapitalization or reorganization, or upon the occurrence of any other event pursuant to which the Conversion Price is adjusted under Sections 2(f)(ii) or 2(f)(iii); and (ii) Preferred Shares issued at the Additional Closing (as defined in the Securities Purchase Agreement) pursuant to the Securities Purchase Agreement.

(xxvii) "**Fundamental Transaction**" means that (A) the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (iv) reorganize, recapitalize or reclassify its Common Stock, or (B) any Person or Persons makes a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Person or Persons making or party to, such purchase, tender or exchange offer), or (C) after the date hereof, any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of either (x) 50% or more of the outstanding shares of Common Stock or (y) 50% or more of the shares of Common Stock not held by such Person or Persons as of the date hereof.

(xxviii) **"Indebtedness"** of any Person means, without duplication (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including (without limitation) "capital leases" in accordance with generally accepted accounting principles (other than trade payables entered into in the ordinary course of business), (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

(xxix) **"Initial Company Conversion Price"** means, as of any date of determination, that price which shall be the lower of (i) the then applicable Conversion Price and (ii) that price computed as 90% of the Market Price as of the applicable Pre-Installment Payment Date. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such applicable Company Conversion Measuring Period.

(xxx) "**Initial Dividend Conversion Price**" means, with respect to any Dividend Pre-Payment Date, the Market Price as of the applicable Dividend Pre-Payment Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction that proportionately decreases or increases the Common Stock during the applicable Initial Dividend Measuring Period.

(xxxi) "**Initial Dividend Measuring Period**" means the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable Dividend Pre-Payment Date.

(xxxii) "**Initial Issuance Date**" means December 12, 2011.

(xxxiii) **"Initial Pro Rata Portion"** means, for each Holder, at any time of determination, a fraction the numerator of which is the number of Preferred Shares held by such Holder on the Initial Issuance Date and the denominator of which is the total number of Preferred Shares issued on the Initial Issuance Date. In the event that a Holder shall sell or otherwise transfer any of its Preferred Shares, the transferee shall be allocated a pro rata portion of the transferring Holder's Pro Rata Portion.

(xxxiv) **"Installment Amount"** means with respect to each Installment Date, an amount equal to the sum of (i) the aggregate Stated Amount of the lesser of (A) 583 Preferred Shares, with respect to Preferred Shares issued on the Initial Issuance Date, and 667 Preferred Shares, with respect to Preferred Shares issued on the Subsequent Issuance Date, and (B) the number of Preferred Shares outstanding on such Installment Date (with respect to Preferred Shares issued on the Initial Issuance Date, disregarding any Preferred Shares issued on a Subsequent Issuance Date, and with respect to Preferred Shares issued on a Subsequent Issuance Date, disregarding Preferred Shares issued on the Initial Issuance Date), and (ii) the accrued Additional Amount for such Preferred Shares, as any such Installment Amount for each Holder may be reduced pursuant to the terms hereof, whether upon conversion, redemption or otherwise.

(xxxv) **"Installment Balance Conversion Shares"** means, for any Installment Date, a number of shares of Common Stock equal to (i) the Post-Installment Conversion Shares with respect to such Installment Date minus (ii) the amount of any Pre-Installment Conversion Shares delivered with respect to the related Installment Date; provided that in the event that the amount of Pre-Installment Conversion Shares exceeds the Post-Installment Conversion Shares for such date, then the Installment Balance Conversion Shares shall equal zero (0).

(xxxvi) **"Installment Date"** means, the monthly anniversary of the applicable Issuance Date beginning on January 12, 2012 through the Maturity Date; provided that if an Installment Date is not a Business Day, then the applicable payments or other deliveries to be made on such Installment Date pursuant to the terms herein shall be due and payable on the Business Day immediately following such Installment Date.

(xxxvii) "**Liquidation Event**" means the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

(xxxviii) "**Make-Whole Additional Amount**" means, as to the applicable event on any applicable date, the amount of any Dividends per applicable Preferred Share that, but for such event, would have accrued after the applicable event with respect to such Preferred Share if the Preferred Shares had remained outstanding for the period from such event through the Maturity Date.

(xxxix) **"Market Price"** means, after excluding the two (2) lowest VWAPs during the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable date of determination, the arithmetic average of the remaining five (5) lowest VWAPs during the twenty (20) consecutive Trading Day period ending on the Trading Day immediately prior to the applicable Pre-Installment Payment Date, Dividend Pre-Payment Date or any other applicable date of determination pursuant hereto.

(xl) "**Maturity Date**" means, with respect to the Preferred Shares, the later of (A) January 12, 2013 and (B) the six month anniversary of the Subsequent Issuance Date, unless extended pursuant to Section 2(d)(vii).

(xli) "**N**" means the number of days from, but excluding, the last Dividend Date with respect to which dividends have been paid in full by the Company on the applicable Preferred Share, or the Initial Issuance Date or Subsequent Issuance Date, as applicable, if no Dividend Date has occurred through the applicable determination date.

(xlii) "**Options**" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(xliii) **"Option Value"** means the value of an Option based on the Black and Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day prior to the public announcement of the applicable Option for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of the applicable Option as of the applicable date of determination, (ii) an expected volatility equal to the 100 day volatility obtained from the HVT function on Bloomberg as of (A) the Trading Day immediately following the public announcement of the issuance of the applicable Option if the issuance of such Option is publicly announced or (B) the Trading Day immediately following the issuance of the applicable Option if the issuance of such Option is not publicly announced, (iii) the underlying price per share used in such calculation shall be the highest VWAP during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the issuance of the applicable Option and ending on (A) the Trading Day immediately following the public announcement of such issuance if the issuance of such Option is publicly announced or (B) the Trading Day immediately following the issuance of the applicable Option if the issuance of such Option is not publicly announced, (iv) a zero cost of borrow, and (v) a 360 day annualization factor.

(xliv) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(xlv) **"Permitted Indebtedness"** means (i) equipment leases, obligations to vendors and other Indebtedness, provided in good faith without intent to circumvent any restriction hereunder by Persons that are in the primary business of providing such leases, obligations or Indebtedness, that entails commercial benefits and obligations beyond merely the obligation to repay borrowed money, (ii) Company guarantees of a Subsidiary's project obligations provided in good faith without intent to circumvent any restriction hereunder if such Subsidiary Indebtedness is secured solely by Subsidiary assets; (iii) Indebtedness for borrowed money incurred by any Subsidiary solely to finance such Subsidiary's ordinary course projects which Indebtedness is provided in good faith without intent to circumvent any restriction hereunder and is secured solely by such Subsidiary's assets.

(xlvi) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(xlvii) **"Post-Dividend Shares"** means, for any Dividend Date, that number of shares of Common Stock equal to the applicable cash amount of Dividends elected or deemed elected to be paid in Dividend Shares hereunder on such Dividend Date divided by the Dividend Conversion Price (without taking into account the delivery of any Pre-Dividend Shares), rounded down to the nearest whole share of Common Stock.

(xlviii) **"Post-Installment Conversion Shares"** means, for any Installment Date, that number of shares of Common Stock equal to the applicable Company Conversion Amount for such Installment Date divided by the Company Conversion Price (without taking into account the delivery of any Pre-Installment Conversion Shares).

(xlix) "**Principal Market**" means The NASDAQ Stock Market LLC.

(l) "**Redemption Prices**" means, collectively, the Triggering Event Redemption Price, the Maturity Date Redemption Price, the Change of Control Redemption Price, any Installment Amount and any other redemption price set forth herein (including in each case any interest, damages and Make-Whole Additional Amount thereon), each of the foregoing, individually, a Redemption Price.

(li) "**Registration Statement**" means the Company's Registration Statement on Form S-3 (File number 333-165733), or other Registration Statement registering the applicable securities under the Securities Act of 1933, as amended.

(lii) "**Required Holders**" means the Holders of Preferred Shares representing at least a majority of the aggregate Preferred Shares then outstanding.

(liii) "**Securities Purchase Agreement**" means the Securities Purchase Agreement, dated as of the Subscription Date, by and among the Company and the investors referred to therein.

(liv) "**Stated Value**" means $1,000.

(lv) "**Subscription Date**" means December 8, 2011.

(lvi) "**Subsequent Issuance Date**" shall mean each date on which Preferred Shares are issued after the Initial Issuance Date.

(lvii) **"Subsequent Pro Rata Portion"** means, for each Holder, at any time of determination, a fraction the numerator of which is the number of Preferred Shares issued to such Holder on the Subsequent Issuance Date and the denominator of which is the total number of Preferred Shares issued on the Subsequent Issuance Date. In the event that a Holder shall sell or otherwise transfer any of its Preferred Shares, the transferee shall be allocated a pro rata portion of the transferring Holder's Subsequent Pro Rata Portion.

(lviii) "**Subsidiaries**" means any joint venture or entity in which the Company, directly or indirectly, owns capital stock or an equity or similar interest, including any subsidiaries formed or acquired after the Initial Issuance Date.

(lix) "**Successor Entity**" means the Person, which may be the Company, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person's Parent Entity.

(lx) "**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

(lxi) "**Tax Deduction**" means a deduction or withholding by the Company for or on account of Tax from a payment under this Certificate of Designations.

(lxii) "**Trading Day**" means any day on which shares of Common Stock are traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(lxiii) **"Transaction Documents"** means this Certificate of Designations, the Securities Purchase Agreement and the Warrants.

(lxiv) "**Voting Stock**" of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(lxv) **"VWAP"** means, for any security as of any date, the dollar volume-weighted average price for such security on the Eligible Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Eligible Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Eligible Market publicly announces is the official close of trading), as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as the Eligible Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Eligible Market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or "pink sheets" by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the VWAP cannot be calculated for a security on a particular date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 2(d)(iii) below. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(lxvi) **"Warrants"** means the warrants to purchase Common Stock issued in connection with the Preferred Shares on the Initial Issuance Date or the Subsequent Issuance Date.

(b) Holder's Conversion Right. Subject to the provisions of Section 8, at any time or times on or after the Initial Issuance Date, any Holder shall be entitled to convert any whole number of Preferred Shares, plus the Additional Amount with respect to such Preferred Shares, then held by such Holder into fully paid and nonassessable shares of Common Stock in accordance with Section 2(d) at the Conversion Rate (as defined below).

(c) Conversion. The number of shares of Common Stock issuable upon conversion of each Preferred Share pursuant to Section 2(b) shall be determined according to the following formula (the "**Conversion Rate**"):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Preferred Share, but rather the number of shares of Common Stock to be issued shall be rounded down to the nearest whole number and, in lieu of any fractional shares to which a Holder would otherwise be entitled, the Company shall pay such amount in cash.

(d) Mechanics of Conversion. The conversion of Preferred Shares shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert Preferred Shares into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall (A) transmit by facsimile, for receipt on or prior to 5:00 p.m., New York City Time, on such date, a copy of a properly completed notice of conversion executed by the registered Holder of the Preferred Shares subject to such conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company and (B) if required by Section 2(d)(viii), surrender to a common carrier for delivery to the Company as soon as practicable following such date the original certificates representing the Preferred Shares being converted (or compliance with the procedures set forth in Section 14) (the "**Preferred Stock Certificates**").

(ii) Company's Response. Upon receipt by the Company of copy of a Conversion Notice, the Company shall (I) as soon as practicable, but in any event within one (1) Trading Day, send, via facsimile, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (II) on or before the third (3rd) Trading Day following the date of receipt by the Company of such Conversion Notice (the "**Share Delivery Date**"), (A) (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its DWAC system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch by overnight courier to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled and (B) pay to the Holder in cash, by wire transfer of immediately available funds, the Make-Whole Additional Amount per Preferred Share converted; provided, however, that if there has been no Equity Condition Failure, the Company may elect to pay such Make-Whole Additional Amount as shares of Common Stock by including such Make-Whole Additional Amount in the Conversion Amount such that an additional number of shares of Common Stock is issued equal to the Make-Whole Additional Amount divided by the Conversion Price. In the event that a Holder converts less than all of the Holder's remaining Preferred Shares pursuant hereto, the Stated Value converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice. If the number of Preferred Shares represented by the Preferred Stock Certificate(s) submitted for conversion, as may be required pursuant to Section 2(d)(viii), is greater than the number of Preferred Shares being converted, then the Company shall, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) (the "**Preferred Stock Delivery Date**") and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of Preferred Shares not converted.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Closing Sale Price, Closing Bid Price, VWAP or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Company are unable to agree upon the determination of the Closing Sale Price, Closing Bid Price or VWAP or arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall within one (1) Business Day after approval of the investment bank or outside accountant by the Required Holders submit via facsimile (A) the disputed determination of the Closing Sale Price, Closing Bid Price or VWAP, as applicable, to an independent, reputable investment bank selected by the Company and approved by the Required Holders or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent, outside accountant. The Company shall use its reasonable best efforts to cause, at the Company's expense, the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent manifest error. In the event that such investment bank or accountant determines that the Company's determination or arithmetic calculations were correct, the Holder shall reimburse the Company for all expenses incurred by the Company in retaining such investment bank or accountant to resolve such dispute. Notwithstanding anything in this Certificate of Designations to the contrary, any payment that is withheld reasonably and in good faith by the Company pending resolution of a dispute pursuant to this Section 2(d)(iii) shall be deemed as timely delivered if delivered within one (1) Business Day of such resolution.

(iv) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date and any Preferred Shares so converted shall cease to be outstanding as of the Conversion Date.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If (x) within three (3) Trading Days after the Company's receipt of the facsimile copy of a Conversion Notice the Company shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Preferred Shares or (y) within three (3) Trading Days of the Company's receipt of a Preferred Stock Certificate the Company shall fail to issue and deliver a new Preferred Stock Certificate representing the number of Preferred Shares to which such Holder is entitled pursuant to Section 2(d)(ii), then in addition to all other available remedies which such holder may pursue hereunder, the Company shall pay additional damages to such Holder for each day after the Share Delivery Date that such conversion is not timely effected and/or each day after the Preferred Stock Delivery Date that such Preferred Stock Certificate is not delivered in an amount equal to one percent (1.0%) of the product of (I) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which such Holder is entitled as set forth in the applicable Conversion Notice and, in the event the Company has failed to deliver a Preferred Stock Certificate to the Holder on or prior to the Preferred Stock Delivery Date, the number of shares of Common Stock issuable upon conversion of the Preferred Shares represented by such Preferred Stock Certificate as of the Preferred Stock Delivery Date and (II) the Closing Sale Price of the Common Stock on the Share Delivery Date, in the case of the failure to deliver Common Stock, or the Preferred Stock Delivery Date, in the case of failure to deliver a Preferred Stock Certificate. If the Company fails to pay the additional damages set forth in this Section 2(d)(v)(A) within five (5) Trading Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of shares of Common Stock equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price in effect on such Conversion Date as specified by the Holder in the Conversion Notice. In addition to the foregoing, if on the Share Delivery Date, the Company shall fail to issue and deliver a certificate to a Holder or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion or the Company's Conversion, as applicable, of Preferred Shares, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Company (a **"Buy-In"**), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the **"Buy-In Price"**), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of the Preferred Shares as required pursuant to the terms hereof.

(B) Void Conversion Notice; Adjustment of Conversion Price. If within five (5) Trading Days after the Share Delivery Date with respect to a conversion of the Preferred Shares, the Company shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Preferred Shares, then the Holder, upon written notice to the Company, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any Preferred Shares that have not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 2(d)(v)(A) or otherwise. Thereafter, the Conversion Price of any Preferred Shares returned or retained by the Holder for failure to timely convert shall be adjusted to the lesser of (I) the Conversion Price relating to the voided Conversion Notice and (II) the lowest VWAP of the Common Stock during the period beginning on the Conversion Date and ending on the date such Holder voided the Conversion Notice, subject to further adjustment as provided in this Certificate of Designations.

(C) Conversion Failure. If within ten (10) Trading Days after the Share Delivery Date with respect to a conversion of the Preferred Shares, the Company shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Preferred Shares (a "**Conversion Failure**"), then the Holder, upon written notice to the Company, may require that the Company redeem all Preferred Shares held by such Holder, including the Preferred Shares previously submitted for conversion and with respect to which the Company has not delivered shares of Common Stock, in accordance with Section 3.

(vi) Pro Rata Conversion; Disputes. In the event the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares, the Company shall convert from each Holder electing to have Preferred Shares converted at such time a pro rata amount of such Holder's Preferred Shares submitted for conversion based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 2(d)(iii).

(vii) Mandatory Redemption at Maturity. If any Preferred Shares remain outstanding on the Maturity Date after giving effect to any Company Conversions and Company Redemptions occurring on such date, the Company shall redeem such Preferred Shares in cash in an amount equal to the outstanding Conversion Amount for each such Preferred Share (the "**Maturity Date Redemption Price**"). The Company shall pay the Maturity Date Redemption Price on the Maturity Date by wire transfer of immediately available funds to an account designated in writing by such Holder. If the Company fails to redeem all of the Preferred Shares outstanding on the Maturity Date by payment of the Maturity Date Redemption Price for each such Preferred Share, then in addition to any remedy such Holder may have under any Transaction Document, (I) the applicable Maturity Date Redemption Price payable in respect of such unredeemed Preferred Shares shall bear interest at the rate of one percent (1.0%) per month, prorated for partial months, until paid in full, and (II) any Holder shall have the option to require the Company to convert any or all of such Holder's Preferred Shares for which the Maturity Date Redemption Price (together with any interest thereon) has not been paid into (on a per Preferred Share basis) shares of Common Stock equal to the number which results from dividing the Maturity Date Redemption Price (together with any interest thereon) by the lower of (x) the Conversion Price and (y) the Market Price. If the Company has failed to pay the Maturity Date Redemption Price in a timely manner as described above, then the Maturity Date may be extended at the option of any applicable Holder for any Preferred Shares held by such Holder until the date the Holders receive such shares of Common Stock or Maturity Date Redemption Price. The Maturity Date also may be extended at the option of any applicable Holder for any Preferred Shares held by such Holder for as long as (A) the conversion of such Preferred Shares would violate the provisions of Section 8 or (B) a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event shall have occurred and be continuing or (C) the Equity Conditions have not been satisfied or are not anticipated to be satisfied (as indicated in a notice from the Company to the Holders delivered thirty (30) Trading Days prior to the Maturity Date) or waived by the applicable Holder prior to and as of the Maturity Date. All redemptions shall be made on a pro-rata basis to all holders of outstanding Preferred Shares. Except as explicitly permitted herein, the Company does not have the right to require any Holder to redeem any of its outstanding Preferred Shares or any unpaid Dividends thereon.

(viii) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Preferred Shares in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the certificate representing the Preferred Shares to the Company unless (A) the full or remaining number of Preferred Shares represented by the certificate are being converted or (B) a Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of any Preferred Shares. The Holder and the Company shall maintain records showing the number of Preferred Shares so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of the certificate representing the Preferred Shares upon each such conversion. In the event of any dispute or discrepancy, such records of the Company establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Preferred Shares represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Preferred Shares unless such Holder first physically surrenders the certificate representing the Preferred Shares to the Company, whereupon the Company will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of Preferred Shares represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each certificate for Preferred Shares shall bear the following legend:

> ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE COMPANY'S CERTIFICATE OF DESIGNATIONS RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 2(d)(viii) THEREOF. THE NUMBER OF PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF PREFERRED SHARES STATED ON THE FACE HEREOF PURSUANT TO SECTION 2(d)(viii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE AND ANY REMAINING INSTALLMENT AMOUNTS MAY HAVE BEEN REDUCED IN CONNECTION WITH CERTAIN PAYMENTS.

(e) Taxes.

(i) Any and all payments made by the Company hereunder, including any amounts received on a conversion or redemption of the Preferred Shares and any amounts on account of dividends or deemed dividends, must be made by it without any Tax Deduction, unless a Tax Deduction is required by law. If the Company is aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must notify the affected Holders promptly.

(ii) If a Tax Deduction is required by law to be made by the Company, subject to Section 2(e)(i) above, the amount of the payment due from the Company will be increased to an amount which (after making the Tax Deduction, including a Tax Deduction applicable to additional sums payable pursuant to Section (e)) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. For the avoidance of doubt, the Company shall deliver to the Holder the same number of Dividend Shares and/or amount of Cash Dividends that such Holder would have received but for the Tax Deduction. If the Company is required to make a Tax Deduction, it must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law. The Company hereby agrees to indemnify each Holder from and against any Taxes required to be withheld from any payments made hereunder, regardless of whether such Taxes were withheld. For the avoidance of doubt, in the case of any Taxes imposed under the U.S. Internal Revenue Code of 1986, as amended (the "Code"), the gross-up and indemnity provisions of this Section 2(e) are intended to apply to gross income taxes imposed under Sections 871(a), 881, 1441 and 1442 of the Code and not to net income taxes imposed under Sections 871(b) and 882 of the Code. Accordingly, the Company and the Holder intend that, in the event that actual or constructive dividends arising under this Certificate of Designations are or become subject to U.S. Federal withholding tax on a gross basis, the Company will pay to the Holder the gross-up or indemnity amounts provided for in this Section 2(e) but that, in the event such Holder is or becomes subject to U.S. net income tax on actual or constructive dividends arising under this Certificate of Designations, the Company will not pay to such Holder any gross-up or indemnity amounts under this Section 2(e).

As soon as practicable after making a Tax Deduction or a payment required in connection with a Tax Deduction, the Company must deliver to the Holder any official receipt or form, if any, provided by or required by the taxing authority to whom the Tax Deduction was paid.

(iii) In addition, the Company agrees to pay in accordance with applicable law, and to indemnify and hold each Holder harmless from and against, any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder (but excluding any income, capital gains or similar taxes) or in connection with the execution, delivery, registration or performance of, or otherwise with respect to, the Preferred Shares ("**Other Taxes**"). As soon as practicable after making a payment of Other Taxes, the Company must deliver to such Holder any official receipt or form, if any, provided by or required by the taxing authority to whom the Other Taxes were paid.

(iv) The obligations of the Company under this Section 2(e) shall survive the Maturity Date of the Preferred Shares and the payment for the Preferred Shares and all other amounts payable hereunder.

(f) Adjustments to Conversion Price. The Conversion Price will be subject to adjustment from time to time as provided in this Section 2(f).

(i) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the Initial Issuance Date, the Company issues or sells, or in accordance with this Section 2(f)(i) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued by the Company in connection with any Excluded Securities) for a consideration per share (the "**New Issuance Price**") less than a price (the " **Applicable Price**") equal to the Conversion Price in effect immediately prior to such issuance or sale (a "**Dilutive Issuance**"), then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For purposes of determining the adjusted Conversion Price under this Section 2(f)(i), the following shall be applicable:

(A) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option is less than the Applicable Price, then each such share of Common Stock underlying such Option shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 2(f)(i)(A), the "lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon granting or sale of the Option, upon exercise of the Option and upon conversion or exchange or exercise of any Convertible Security issuable upon exercise of such Option less any consideration paid or payable by the Company with respect to such one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion exercise or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange or exercise of such Convertible Securities.

(B) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise thereof is less than the Applicable Price, then each such share of Common Stock underlying such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(f)(i)(B), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange or exercise of such Convertible Security less any consideration paid or payable by the Company with respect to such one share of Common Stock upon the issuance or

sale of such Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock upon conversion or exchange or exercise of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price had been or are to be made pursuant to other provisions of this Section 2(f)(i), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(C) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exchange or exercise of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable or exercisable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(f)(i)(C), if the terms of any Option or Convertible Security that was outstanding as of the Initial Issuance Date are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(D) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction, the other securities other than the Options issued or sold in such integrated transaction shall be deemed to have been issued for the difference of (I) the aggregate consideration received by the Company less any consideration paid or payable by the Company pursuant to the terms of such other securities of the Company, less (II) the Option Value of such Options. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received or receivable therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company will be the Closing Sale Price of such securities on the date of receipt of such securities. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Business Days after the tenth (10^{th}) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Required Holders. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(E) Record Date. If the Company takes a record of the holders of Common Stock for the purpose of entitling them (I) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (II) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(ii) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock . If the Company at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(iii) Other Events. If any event occurs of the type contemplated by the provisions of this Section 2(f) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Conversion Price, as mutually determined by the Company's Board of Directors and the Required Holders, so as to protect the rights of the Holders; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 2(f).

(iv) Voluntary Adjustment By Company. The Company may at any time reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

(g) Notices.

(i) Promptly after any adjustment of the Conversion Price pursuant to Section 2(f), the Company will give written notice thereof to each Holder, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 2(d)(iii).

(ii) The Company will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Company closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Fundamental Transaction or Liquidation Event, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(iii) The Company will also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Fundamental Transaction or Liquidation Event will take place, provided that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(3) Redemption at Option of Holders.

(a) Triggering Event. A "**Triggering Event**" shall be deemed to have occurred at such time as any of the following events:

(i) while the Registration Statement is required to be maintained, the effectiveness of the Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to the Holder for the issuance and sale of the shares upon conversion of the Preferred Shares or exercise of the Warrants, and such lapse or unavailability continues for a period of ten (10) consecutive Trading Days or for more than an aggregate of thirty (30) Trading Days in any 365-day period;

(ii) the suspension from trading or failure of the Common Stock to be listed on the Principal Market or another Eligible Market for a period of five (5) consecutive Trading Days or for more than an aggregate of ten (10) Trading Days in any 365-day period;

(iii) (A) a Conversion Failure had occurred or (B) the Company's notice, written or oral, to any Holder, including by way of public announcement, or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Preferred Shares into shares of Common Stock that is tendered in accordance with the provisions of this Certificate of Designations;

(iv) at any time following the tenth (10^{th}) consecutive Business Day that a Holder's Authorized Share Allocation is less than the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion of the full Conversion Amount of the Preferred Shares and the delivery of the related Make-Whole Additional Amount for such Preferred Shares in shares of Common Stock (without regard to any limitations on conversion set forth in Section 8 or otherwise);

(v) the Company's failure to pay to the Holder any amounts, which amounts individually or in the aggregate exceed $25,000, when and as due pursuant to this Certificate of Designations or any other Transaction Document;

(vi) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable Federal or State law or (iii) appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(vii) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Subsidiary in furtherance of any such action; or

(viii) the Company breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except for purposes of this clause (viii) (i) any breach explicitly excepted from any of clauses (i) through (vii) described above, (ii) in the case of a breach of a covenant which is curable, only if such breach remains uncured for a period of at least five (5) Business Days, (iii) any failure by the Company to timely make any payments, whether in cash or shares of Common Stock, which payments individually or in the aggregate are less than or equal to $25,000, and (iv) any failure by the Company to timely deliver notice or take any other action, where the Company actually delivers such notice or takes such action within five (5) Business Days of the date due.

(b) Redemption Option Upon Triggering Event. In addition to all other rights of the Holders contained herein, after a Triggering Event, each Holder shall have the right, at such Holder's option, to require the Company to redeem (a "**Triggering Event Redemption**") all or a portion of such Holder's Preferred Shares at a price per Preferred Share equal to the sum of (i) the greater of (A) 125% of the Conversion Amount and (B) the product of (1) the Conversion Rate in effect at such time as such Holder delivers a Notice of Redemption at Option of Holder (as defined below) and (2) the greatest Closing Sale Price of the Common Stock during the period beginning on the date immediately preceding such Triggering Event and ending on the date the Holder delivers the Notice of Redemption at Option of Holder and (ii) the Make-Whole Additional Amount per Preferred Share being redeemed (the sum of the foregoing clauses (i) and (ii), the "**Triggering Event Redemption Price**").

(c) Mechanics of Redemption at Option of Buyer. Within one (1) Business Day after the occurrence of a qualifying Triggering Event, the Company shall deliver written notice thereof via facsimile or overnight courier and, in either case, via electronic mail ("**Notice of Triggering Event**") to each Holder. At any time after the earlier of a Holder's receipt of a Notice of Triggering Event and such Holder becoming aware of a Triggering Event, any Holder of Preferred Shares then outstanding may require the Company to redeem up to all of such Holder's Preferred Shares by delivering written notice thereof via facsimile and overnight courier ("**Notice of Redemption at Option of Holder**") to the Company, which Notice of Redemption at Option of Holder shall indicate the number of Preferred Shares that such Holder is electing to redeem.

(d) Payment of Redemption Price. Upon the Company's receipt of a Notice(s) of Redemption at Option of Buyer from any Holder, the Company shall within one (1) Business Day of such receipt notify each other Holder by facsimile of the Company's receipt of such notice(s). The Company shall deliver on the fifth (5th) Business Day after the Company's receipt of the first Notice of Redemption at Option of Holder (the "**Triggering Event Redemption Date**") by wire transfer of immediately available funds, an amount in cash equal to the applicable Triggering Event Redemption Price to all Holders that deliver a Notice of Redemption at Option of Holder prior to the fifth (5th) Business Day after the Company's receipt of the first Notice of Redemption at Option of Holder. To the extent redemptions required by this Section 3 are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. If the Company is unable to redeem all of the Preferred Shares submitted for redemption, the Company shall (i) redeem a pro rata amount from each Holder based on the number of Preferred Shares submitted for redemption by such Holder relative to the total number of Preferred Shares submitted for redemption by all Holders and (ii) in addition to any remedy such Holder may have under this Certificate of Designations, pay to each Holder interest at the rate of one percent (1.0%) per month (prorated for partial months) in respect of each unredeemed Preferred Share until paid in full. In the event less than all of a Holder's remaining Preferred Shares are redeemed pursuant hereto, the Stated Value redeemed shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Notice of Redemption at Option of Holder or other applicable notice. The Holders and Company agree that in the event of the Company's redemption of any Preferred Shares under this Section 3, the Holders' damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holders. Accordingly, any redemption premium due under this Section 3 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty.

(e) Void Redemption. In the event that the Company does not pay a Redemption Price within the applicable time period, at any time thereafter and until the Company pays such unpaid applicable Redemption Price in full, a Holder shall have the option to, in lieu of redemption, require the Company to promptly return to such Holder any or all of the Preferred Shares that were submitted for redemption by such Holder and for which the applicable Redemption Price has not been paid, by sending written notice thereof to the Company via facsimile (the "**Void Optional Redemption Notice**"). Upon the Company's receipt of such Void Optional Redemption Notice, (i) the Redemption Notice of Holder shall be null and void with respect to those Preferred Shares subject to the Void Optional Redemption Notice, (ii) the Company shall immediately return any Preferred Shares subject to the Void Optional Redemption Notice, and (iii) the Conversion Price of such returned Preferred Shares shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Optional Redemption Notice is delivered to the Company and (B) the lowest VWAP of the Common Stock during the period beginning on the date on which the Redemption Notice is delivered to the Company and ending on the date on which the Void Optional Redemption Notice is delivered to the Company.

(f) Disputes; Miscellaneous. In the event of a dispute as to the determination of the arithmetic calculation of any Redemption Price, such dispute shall be resolved pursuant to Section 2(d)(iii) above with the term "Redemption Price" being substituted for the term "Conversion Rate". A Holder's delivery of a Void Optional Redemption Notice and exercise of its rights following such notice shall not effect the Company's obligations to make any payments which have accrued prior to the date of such notice. In the event of a redemption pursuant to this Certificate of Designations of less than all of the Preferred Shares represented by a particular Preferred Stock Certificate, the Company shall promptly cause to be issued and delivered to the Holder of such Preferred Shares a Preferred Stock Certificate representing the remaining Preferred Shares which have not been redeemed, if necessary and provided that the Holder shall surrender the certificate representing the Preferred Shares held by the Holder.

(4) Redemption by the Company .

(a) Company Installment Conversion or Redemption .

(i) General. On each applicable Installment Date, provided there has been no Equity Conditions Failure as of the applicable notice or payment dates, the Company shall convert from each Holder of the Preferred Shares its Initial Pro Rata Portion or Subsequent Pro Rata Portion or any other portion as adjusted to give effect to any applicable notice given by a Holder to the Company pursuant to the second to last sentence in Section 2(d)(ii), the third to last sentence in Section 3(d), the last sentence in Section 4(a)(ii)(2), the last Sentence in Section 4(a)(iii) or the fourth to last sentence in Section 9(a), as applicable, of the Installment Amount due on such date by converting such Installment Amount, in accordance with this Section 4(a) (a "**Company Conversion**"); provided, however, that the Company may, at its option following notice to the Holders, pay the Installment Amount by redeeming such Installment Amount (a "**Company Redemption**") or by any combination of a Company Conversion and a Company Redemption so long as all of the outstanding applicable Installment Amount shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 4. On or prior to the date which is the twenty-sixth (26th) Trading Day (disregarding, solely for purposes of determining timely compliance with the applicable notice rquirements, any suspensions or closures of trading which may occur after the Installment Notice Due Date) prior to each Installment Date (each, an "**Installment Notice Due Date**"), provided that the first Installment Notice Due Date shall be the Initial Issuance Date, or with respect to Preferred Shares issued following the Initial Issuance Date, the applicable Subsequent Issuance Date, the Company shall deliver written notice (each, a "**Company Installment Notice**" and the date all of the Holders receive such notice is referred to as the " **Company Installment Notice Date**"), to each Holder of Preferred Shares which Company Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of the Preferred Shares shall be converted in whole pursuant to a Company Conversion (such amount to be converted, the "**Company Conversion Amount**") or (B) state that the Company shall redeem for cash, in whole or in part, the applicable Installment Amount pursuant to a Company Redemption (such amount to be redeemed, the "**Company Redemption Amount**") and the portion, if any, that the Company elects to convert pursuant to a Company Conversion (such amount also, a "**Company Conversion Amount**") which amounts when added together, must equal the applicable Installment Amount and (ii) if the Installment Amount is to be paid, in whole or in part, pursuant to a Company Conversion, certify that the Equity Conditions have been satisfied as of the date of the Company Installment Notice. Each Company Installment Notice shall be irrevocable. If the Company does not timely deliver a Company Installment Notice in accordance with this Section 4(a)(i), then the Company shall be deemed to have delivered an irrevocable Company Installment Notice confirming a Company Conversion and shall be deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied. Except as expressly provided in this Section 4(a)(i), the Company shall convert and/or redeem the applicable Installment Amount of the Preferred Shares pursuant to this Section 4(a) in the same proportion among the Holders based on their respective Initial Pro Rata Portions or Subsequent Pro Rata Portions or any other portion as adjusted to give effect to any applicable notice given by a Holder to the Company pursuant to the second to last sentence in Section 2(d)(ii), the third to last sentence in Section 3(d), the last sentence in Section 4(a)(ii)(2), the last Sentence in Section 4(a)(iii) or the fourth to last sentence in Section 9(a), as applicable. The Company Conversion Amount (whether set forth in the Company Installment Notice or by operation of this Section 4(a)) shall be converted in accordance with Section 4(a)(ii) and the Company Redemption Amount shall be redeemed in accordance with Section 4(a)(iii).

(ii) Mechanics of Company Conversion. (1) If the Company delivers a Company Installment Notice and confirms, or is deemed to have confirmed, in whole or in part, a Company Conversion in accordance with Section 4(a), then on the date which is the twenty-third (23rd) Trading Day (disregarding, solely for purposes of determining timely compliance with the delivery of Pre-Installment Shares, any suspensions or closures of trading which may occur after the Pre-Installment Payment Date) prior to each Installment Date (each, a "**Pre-Installment Payment Date**") (provided that the first Pre-Installment Payment Date shall be the Initial Issuance Date or, with respect to Preferred Shares issued following the Initial Issuance Date, the applicable Subsequent Issuance Date), the Company shall, or shall direct the Transfer Agent to, deliver to each Holder's account with DTC, or issue each Holder a certificate for, a number of shares of Common Stock equal to each Holder's quotient of (A) such Company Conversion Amount for such Holder divided by (B) the Initial Company Conversion Price (the "**Pre-Installment Conversion Shares**"). On the Installment Date (the "**Installment Settlement Date**"), the Company shall deliver a notice setting forth the calculation of the Installment Balance Conversion Shares (and the calculation of the component parts of such calculation) to the Holders and shall, or shall direct the Transfer Agent to, deliver to each Holder's account with DTC, or issue to each Holder a certificate for, a number of additional shares of Common Stock, if any, equal to each Holder's Installment Balance Conversion Shares. If a Triggering Event occurs during the period from any Pre-Installment Payment Date through the Installment Settlement Date and a Holder elects a Triggering Event Redemption in accordance with Section 3(b), then, at the Holder's option, either (1) the Holder, upon receipt of the Triggering Event Redemption Price (which Redemption Price includes redemption of any portion of a Company Conversion Amount represented by Pre-Installment Conversion Shares that the Holder shall return to the Company), shall return any Pre-Installment Conversion Shares delivered in connection with the applicable Installment Date, which the Holder has not otherwise sold, transferred or disposed of, to the Company or (2) the Conversion Amount used to calculate the Triggering Event Redemption Price shall be reduced by the product of (x) the Holder's Company Conversion Amount applicable to such Installment Date multiplied by (y) the Conversion Share Ratio of such Holder.

(2) If there is an Equity Conditions Failure at any time after the Pre-Installment Payment Date and prior to the Installment Settlement Date, then at the option of any Holder designated in writing to the Company (the "**First Redemption Notice**"), the Holder may require the Company to do either one or both of the following: (A) the Company shall redeem all or any part designated by the Holder of the applicable Company Conversion Amount (such designated amount is referred to as the "**First Redemption Amount**") on the third Trading Day after day of delivery of the applicable First Redemption Notice, and the Company shall pay to the Holder on such Trading Day, by wire transfer of immediately available funds, an amount in cash equal to 125% of such First Redemption Amount, and/or (B) the Company Conversion shall be null and void with respect to all or any part designated by the Holder of the applicable Company Conversion Amount and the Holder shall be entitled to all the rights of a holder of Preferred Shares with respect to such amount of the Company Conversion Amount; provided, however, that the Conversion Price for such applicable Company Conversion Amount shall thereafter be adjusted to equal the lowest of (1) the then applicable Conversion Price, (2) the Company Conversion Price as in effect on the date on which the Holder voided the Company Conversion and (3) the Company Conversion Price as in effect on the date on which the Holder delivers a Conversion Notice relating thereto. In the event the Holder elects to require payment of the First Redemption Amount upon an Equity Conditions Failure following the Company Installment Notice Date, at the Holder's option, either (x) the Holder shall, upon receipt of a First Redemption Amount (which amount includes redemption of any portion of a Company Conversion Amount represented by Pre-Installment Conversion Shares that the Holder shall return to the Company), return any Pre-Installment Conversion Shares delivered in connection with the applicable Installment Date, which the Holder has not otherwise sold, transferred or disposed of, to the Company or (y) any related First Redemption Amount shall be reduced by the product of (I) the Company Conversion Amount of such Holder applicable to such Installment Date multiplied by (II) the Conversion Share Ratio of such Holder. If the Company fails to redeem any First Redemption Amount on or before the applicable payment date, by payment of such amount on the applicable payment date, then the Holder shall have the rights set forth in Section 3(e) as if the Company failed to pay the applicable Company Redemption Price and all other rights as a Holder of Preferred Shares (including, without limitation, such failure constituting a Triggering Event described in Section 3(a)(v)). Notwithstanding anything to the contrary in this Section 4(a)(ii), but subject to Section 8, until the Company delivers Common Stock representing the Company Conversion Amount to the Holder, the Company Conversion Amount may be converted by the Holder into Common Stock pursuant to Section 2. In the event that the Holder elects to convert the Company Conversion Amount prior to the applicable Company Installment Notice Date as set forth in the immediately preceding sentence, the Company Conversion Amount so converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice.

(iii) Mechanics of Company Redemption. If the Company elects, or is deemed to have confirmed, a Company Redemption in accordance with Section 4(a)(i), then the Company Redemption Amount which is to be paid to the Holder on the applicable Installment Date shall be redeemed by the Company, and the Company shall pay to the Holder on such Installment Date, by wire transfer of immediately available funds, an amount in cash (the "**Company Installment Redemption Price**") equal to 100% of the Company Redemption Amount. If the Company fails to redeem the Company Redemption Amount on the applicable Installment Date by payment of the Company Installment Redemption Price on such date, then at the option of the Holder designated in writing to the Company (any such designation shall be deemed a "**Conversion Notice**" pursuant to Section 2(d)), the Holder may require the Company to convert all or any part of the Company Redemption Amount at 75% of the Initial Company Conversion Price as of the Installment Date subject to Section 8. Conversions required by this Section 4(a)(iii) shall be made in accordance with the provisions of Section 2. Notwithstanding anything to the contrary in this Section 4(a)(iii), but subject to Section 8, until the Company Installment Redemption Price (together with any interest thereon) is paid in full, the Company Redemption Amount (together with any interest thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 2. In the event a Holder elects to convert all or any portion of the Company Redemption Amount applicable to such Holder prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Company Redemption Amount so converted shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Conversion Notice or other applicable notice.

(b) Other than as specifically permitted by this Certificate of Designations, the Company may not redeem any of the outstanding Preferred Shares and any unpaid Dividends thereon.

(5) Other Rights of Holders.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by such Holder and having similar ranking to the Preferred Shares, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such shares of publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity), as adjusted to reflect the value of such Fundamental Transaction, in accordance with the provisions of this Certificate of Designations. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Preferred Shares.

(b) Purchase Rights. If at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holders will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares) immediately before the date on which a

record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(6) Reservation of Shares.

(a) The Company shall have sufficient authorized and unissued shares of Common Stock for each of the Preferred Shares equal to 130% of the number of shares of Common Stock necessary to effect the conversion at the Conversion Rate (without regard to any limitations herein on any such conversion) with respect to the Conversion Amount and the Make-Whole Additional Amount (assuming payment in shares of Common Stock) of each such Preferred Share as of the Initial Issuance Date or the Subsequent Issuance Date (with respect to Preferred Shares issued on any such Subsequent Issuance Date). The Company shall, so long as any of the Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversions of the Preferred Shares, such number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding; provided that at no time shall the number of shares of Common Stock so reserved be less than 130% of the number of shares of Common Stock for which the Preferred Shares are at any time convertible (without regard to any limitations on conversions) (the "**Required Reserve Amount**"); provided, further, that any Dividend Shares issued by the Company shall not be issued from any Common Stock so reserved. The initial number of shares of Common Stock reserved for conversions of the Preferred Shares and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of Preferred Shares held by each Holder at the time of issuance of the Preferred Shares or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares (other than pursuant to a transfer of Preferred Shares in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of Preferred Shares then held by such Holders.

(b) Insufficient Authorized Shares. If at any time while any of the Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall as soon as practicable take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(7) Voting Rights. Except as otherwise required by applicable law or as set forth herein, the holders of the Preferred Shares shall not be entitled to vote.

(8) Limitation on Beneficial Ownership.

(a) The Company shall not effect any conversion of Preferred Shares, and no Holder shall have the right to convert any Preferred Shares, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with such Person's affiliates) would have acquired, through conversion of Preferred Shares or otherwise, beneficial ownership of a number of shares of Common Stock that exceeds 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing, the number of shares of Common Stock beneficially owned by a Person and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Person or any of its affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any notes or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained in this Section beneficially owned by such Person or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 8, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 8, in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-K, Form 10-Q, or Form 8-K, as the case may be, (2) a more recent public announcement by the Company, or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of any Holder, the Company shall within one (1) Business Day following the receipt of such notice, confirm orally and in writing to any such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Preferred Shares, by such Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided, that (i) any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder providing such written notice and not to any other Holder. In the event that the Company cannot pay any portion of any Pre-Dividend Shares, Dividend Shares, Pre-Installment Conversion Shares, Post-Installment Conversion Shares or any other dividend, distribution, grant or issuance hereunder (including pursuant to Section 5(b)) to a Holder solely by reason of this Section 8(a) (such shares, the "**Limited Shares**"), notwithstanding anything to the contrary contained herein, the Company shall not be required to pay cash in lieu of the payment that otherwise would have been made in such Limited Shares, but shall hold any such Limited Shares in abeyance for such Holder until such time, if ever, that the delivery of such Limited Shares shall not cause the Holder to exceed the Maximum Percentage, at which time such Holder shall be delivered such Limited Shares to the extent as if there had been no such limitation. If Limited Shares have not been delivered at or prior to the Maturity Date, the Holder may extend the Maturity Date in accordance with Section 2(d)(vii) hereof for so long as such restriction continues. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 8(a) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(b) The Company shall not be obligated to issue any shares of Common Stock as Dividend Shares or upon conversion of Preferred Shares, and the Holders of Preferred Shares shall not have the right to receive any Dividend Shares or upon conversion of Preferred Shares any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue as Dividend Shares and upon conversion or exercise, as applicable, of Preferred Shares or otherwise without breaching the Company's obligations under the rules or regulations of the Principal Market, whether or not the Common Stock is listed on the Principal Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount or (B) obtains a written opinion from outside

counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. Until such approval or written opinion is obtained, no Holder of Preferred Shares shall be issued in the aggregate, upon conversion or payment, as applicable, of Preferred Shares, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement) and the denominator of which is the aggregate number of all Preferred Shares issued to the Holders pursuant to the Securities Purchase Agreement on the Closing Date (with respect to each such Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any Holder shall convert all of such Holder's Preferred Shares into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining Holders of Preferred Shares on a pro rata basis in proportion to the shares of Common Stock underlying the Preferred Shares then held by each such Holder. In the event that the Company is prohibited from issuing any shares of Common Stock for which a Conversion Notice has been received as a result of the operation of this Section 8(b), the Company shall pay cash in exchange for cancellation of such Preferred Shares, at a price per Preferred Share equal to the difference between the VWAP and the Conversion Price as of the date of the attempted conversion.

(9) Change of Control Redemption Right; Dissolution, Winding-Up.

(a) Change of Control. No sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a Change of Control, but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via facsimile and overnight courier to the Holders (a "**Change of Control Notice**") setting forth a description of such transaction in reasonable detail and the anticipated Change of Control Redemption Date if then known. At any time during the period (the "**Change of Control Period**") beginning after a Holder's receipt of a Change of Control Notice and ending on the date that is twenty (20) Trading Days after the consummation of such Change of Control, such Holder may require the Company to redeem (a "**Change of Control Redemption**") all or any portion of such Holder's Preferred Shares by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. Any Preferred Shares subject to redemption pursuant to this Section 9(a) shall be redeemed by the Company in cash at a price equal to the sum of (I) the greater of (i) 120% of the Conversion Amount being redeemed and (ii) the product of (A) the Conversion Amount being redeemed and (B) the quotient determined by dividing (1) the greatest Closing Sale Price of the Common Stock during the period commencing as of the Trading Day immediately prior to the public announcement of such proposed Change of Control and ending as of the Trading Day immediately prior to the consummation of such Change of Control by (2) the Conversion Price and (II) the applicable Make-Whole Additional Amount for the Preferred Shares being redeemed (the "**Change of Control Redemption Price**"). The Company shall make payment of the Change of Control Redemption Price concurrently with the consummation of such Change of Control if such a Change of Control Redemption Notice is received prior to the consummation of such Change of Control and within five (5) Trading Days after the Company's receipt of such notice otherwise (the "**Change of Control Redemption Date**"). To the extent redemptions required by this Section 9(a) are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 9(a), until the Change of Control Redemption Price (together with any interest thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 9(a) may be converted, in whole or in part, by the Holder into shares of Common Stock, or in the event the Conversion Date is after the consummation of the Change of Control, shares or equity interests of the Successor Entity substantially equivalent to the Company's Common Stock pursuant to Section 2(c)(i). In the event of a partial redemption of the Preferred Shares pursuant hereto, the Stated Value redeemed shall be deducted from the Installment Amounts applying such reduction to the Installment Dates in reverse order first to the last Installment Date on which Installment Amounts are then scheduled to be paid to such Holder, unless such Holder shall otherwise specify in the Change of Control Redemption Notice or other applicable notice. The parties hereto agree that in the event of the Company's redemption of any portion of the Preferred Shares under this Section 9(a), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 9(a) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. In the event that the Company does not pay the Change of Control Redemption Price on the Change of Control Redemption Date, then the Holder shall have the right to void the redemption pursuant to Section 3(e).

(b) Liquidation. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of the Capital Stock of the Company of any class junior in rank to the Preferred Shares in respect of the preferences as to distributions and payments on the liquidation, dissolution and winding up of the Company, an amount per Preferred Share equal to the sum of the Conversion Amount plus the Make-Whole Additional Amount; provided that, if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of other classes or series of preferred stock of the Company that are of equal rank with the Preferred Shares as to payments of Liquidation Funds (the "**Pari Passu Shares**"), if any, then each Holder and each holder of any such Pari Passu Shares shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder as a liquidation preference, in accordance with their respective Certificate of Designations, Preferences and Rights, as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and Pari Passu Shares. After the foregoing distributions, the Holders shall be entitled, on a *pari passu* basis with the holders of Common Stock and treating for the purpose thereof all of the Preferred Shares as having been converted into Common Stock pursuant to Section 2, to participate in the distribution of any remaining assets of the Company to the holders of the outstanding Common Stock. To the extent necessary, the Company shall cause such actions to be taken by any of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section. All the preferential amounts to be paid to the Holders under this Section shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Company to the holders of, shares of other classes or series of preferred stock of the Company junior in rank to the Preferred Shares in connection with a Liquidation Event as to which this Section applies. The purchase or redemption by the Company of stock of any class, in any manner permitted by law, shall not, for the purposes hereof, be regarded as a Liquidation Event.

(10) Equal Treatment of Holders. No consideration shall be offered or paid to any of the Holders to amend or waive or modify any provision of the Preferred Shares or Warrants, unless the same consideration is also offered to all of the Holders. This provision constitutes a separate right granted to each of the Holders by the Company and shall not in any way be construed as the Holders acting in concert or as a group with respect to the purchase, disposition or voting of securities or otherwise.

(11) Negative Covenants. As long as any Preferred Shares are outstanding, unless the Required Holders shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly incur or guarantee, assume or suffer to exist any Indebtedness, other than Permitted Indebtedness. For so long as any Preferred Shares remain outstanding, the Company shall not, in any manner, issue or sell any rights, warrants or options to subscribe for or purchase Common Stock or directly or indirectly convertible into or exchangeable or exercisable for Common Stock at a price which varies or may vary with the market price of the Common Stock, including by way of one or more reset(s) to any fixed price unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price.

(12) Ranking. All shares of Common Stock shall be of junior rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company. The rights of the shares of Common Stock shall be subject to the preferences and relative rights of the Preferred Shares. Without the prior express written consent of the Required Holders, the Company shall not hereafter authorize or issue additional or other Capital Stock that is of senior or pari-passu rank to the Preferred Shares in respect of the preferences as to distributions and payments upon a Liquidation Event, except Preferred Shares issued pursuant to the Securities Purchase Agreement on the Subsequent Issuance Date. The Company shall be permitted to issue preferred stock that is junior in rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon the liquidation, dissolution and winding up of the Company, provided, that the maturity date (or any other date requiring redemption, repayment or any other payment, including, without limitation, dividends in respect of any such preferred shares) of any such junior preferred shares is not on or before 91 days after the Maturity Date. In the event of the merger or consolidation of the Company with or into another corporation, the Preferred Shares shall maintain their relative powers, designations and preferences provided for herein (except that the Preferred Shares may not be *pari passu* with, or junior to, any Capital Stock of the successor entity) and no merger shall result inconsistent therewith. Without the prior express written consent of the Required Holders, the Company shall not hereafter authorize or issue any Capital Stock (other than shares of Common Stock) that has any voting power, except voting power as required by applicable law.

(13) Participation. Subject to the rights of the holders, if any, of the Pari Passu Shares, the Holders shall, as holders of Preferred Stock, be entitled to such dividends paid and distributions made to the holders of Common Stock to the same extent as if such Holders had converted the Preferred Shares into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

(14) Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, shall be required before the Company may: (a) amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or bylaws, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Shares, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of shares of Preferred Shares; (c) create or authorize (by reclassification or otherwise) any new class or series of shares that has a preference over or is on a parity with the Preferred Shares with respect to dividends or the distribution of assets on the liquidation, dissolution or winding up of the Company; (d) purchase, repurchase or redeem any shares of Common Stock (other than (i) pursuant to equity incentive agreements with employees giving the Company the right to repurchase shares upon the termination of services at cost and (ii) upon surrender of restricted stock in connection with tax withholding); (e) pay dividends or make any other distribution on the Common Stock or other Capital Stock (other than the Preferred Shares); (f) increase the amount of any securities issuable pursuant to any Approved Stock Plan; (g) amend any provision of the Certificate of Designations with respect to the Preferred Shares or (h) whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares. Any Preferred Shares which are converted, repurchased or redeemed shall be automatically and immediately cancelled and shall not be reissued, sold or transferred.

(15) Lost or Stolen Certificates. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the Preferred Shares, and, in the case of loss, theft or destruction, of an indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Company shall not be obligated to re-issue preferred stock certificates if the Holder contemporaneously requests the Company to convert such Preferred Shares into Common Stock.

(16) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof, and the Company shall have the obligation to deliver such amounts to such Holder in accordance with the terms of this Certificate of Designations and prior to the Company paying or otherwise fulfilling any junior obligations of the Company (except as otherwise expressly provided herein), and such amounts shall not, except as expressly provided herein, be subject to or be payable and deliverable to such Holder subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(17) Construction. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any person as the drafter hereof.

(18) Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(19) Notice. Whenever notice or other communication is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice shall be given in accordance with the following instructions: (a) if within the domestic United States, by first class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or by facsimile or (b) if delivered from outside the United States, by International Federal Express or facsimile, and (c) will be deemed given (i) if delivered by first class registered or certified domestic mail, three business days after being so mailed, (ii) if delivered by nationally recognized overnight carrier, one business day after being so mailed, (iii) if delivered by International Federal Express, two business days after being so mailed, and (iv) if delivered by facsimile, upon electronic confirmation of receipt and will be delivered and addressed as follows:

(a) if to the Company, to:

Oxygen Biotherapeutics, Inc.
ONE Copley Parkway
Suite 490
Morrisville, NC 27560
Attention: Nancy Hecox
Facsimile: 919-855-2133

with a copy to:

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
2500 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601
Attention: Margaret N. Rosenfeld, Esq.
Facsimile: (919) 821-6800

(b) if to a Holder, at such address or addresses or facsimile numbers as shall have been furnished to the Company in writing.

The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. The Company may update its notice information by written notice to the Holders in accordance herewith. In providing any notice or making any delivery, the Company shall be entitled to rely upon the address or addresses and facsimile numbers of the Holders as provided to the Company in accordance with this Section 19 and reflected in the Company's books and records. The delivery of any stock certificates, notices or other instruments or documents by the Company to any Holder at such address or addresses and facsimile numbers so provided shall constitute valid delivery hereunder.

(20) Transfer of Preferred Shares. A Holder may assign some or all of the Preferred Shares and the accompanying rights hereunder held by such Holder without the consent of the Company; provided that such assignment is in compliance with applicable securities laws. Holders shall have the right to transfer and to exercise rights with respect to fractional Preferred Shares and any redemptions of Preferred Shares by the Company shall be made calculating the number of applicable Preferred Shares to one-ten thousandth of a Preferred Share.

(21) Preferred Share Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the Holders), a register for the Preferred Shares, in which the Company shall record the name and address of the persons in whose name the Preferred Shares have been issued, as well as the name and address of each transferee. The Company may treat the person in whose name any Preferred Share is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

(22) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the rules and regulations of the Principal Market, the DGCL, this Certificate of Designations or otherwise with respect to the issuance of the Preferred Shares or the Common Stock issuable upon conversion thereof may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the Principal Market and the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(23) Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

(24) Trading Activities. It is understood and acknowledged by the Company that the Holders have not been asked to agree, nor have the Holders agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Warrants, Preferred Shares or Common Stock for any specified term. The Company further understands and acknowledges that the Holder may engage in hedging and/or trading activities at various times during the period that the Warrants, Preferred Shares, Common Stock, Pre-Dividend Shares, Post-Dividend Shares, Dividend Balance Shares, Pre-Installment Conversion Shares, Post-Installment Conversion Shares, Installment Balance Conversion Shares or Warrant Shares under the Warrants are outstanding, including, without limitation, during the periods that the value of the Pre-Dividend Shares, Post-Dividend Shares, Dividend Balance Shares, Pre-Installment Conversion Shares, Post-Installment Conversion Shares, Installment Balance Conversion Shares or Warrant Shares under Warrants are being determined and such hedging and/or trading activities, if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted.

(25) Independent Nature of Holders' Obligations and Rights. The rights and obligations of each Holder under any Transaction Document are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holder as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Certificate of Designations or out of any other Transaction Documents, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by Michael B. Jebsen, its Chief Financial Officer and Interim Chief Executive Officer, as of the 8th day of December, 2011.

OXYGEN BIOTHERAPEUTICS, INC.

Date

By: /s/ Michael B. Jebsen

Name: Michael B. Jebsen

Title: Interim Chief Executive Officer and Chief Financial Officer

EXHIBIT I

OXYGEN BIOTHERAPEUTICS, INC.

CONVERSION NOTICE

Reference is made to the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of Oxygen Biotherapeutics, Inc. (the "**Certificate of Designations**"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, par value $0.0001 per share (the "**Preferred Shares**"), of Oxygen Biotherapeutics, Inc., a Delaware corporation (the "**Company**"), indicated below into shares of Common Stock, par value $0.0001 per share (the " **Common Stock**"), of the Company, as of the date specified below.

Date of
Conversion: _____

Number of Preferred Shares to be converted: _____

Stock certificate no(s). of Preferred Shares to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Conversion Price:_____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Preferred Shares are being converted in the following name and to the following address:

Issue to: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

Installment Amounts to be reduced and amount of reduction: _____

[NOTE TO HOLDER -- THIS FORM MUST BE SENT CONCURRENTLY TO TRANSFER AGENT **]**

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs Interwest Transfer Company, Inc. to issue the above indicated number of shares of Common Stock in accordance with the Irrevocable Transfer Agent Instructions dated December __, 2011 from the Company and acknowledged and agreed to by Interwest Transfer Company, Inc.

OXYGEN BIOTHERAPEUTICS, INC.

By: _____

Name: _____
Title: _____

SUPPLY AGREEMENT

with

FluoroMed, L.P.

This Agreement, effective as of the last signing date (the ***"Effective Date"***), is entered by and between Oxygen Biotherapeutics, Inc., having its principal place of business at ONE Copley Parkway, Suite 490, Morrisville, NC 27560 USA ***("OBI")*** and FluoroMed, L.L. C. with an address at 2350 Double Creek Dr., Round Rock, Texas 78664 ***("Company")***, (each individually referred to herein as a "Party" and collectively referred to as the "Parties"). WHEREAS, OBI is developing and owns rights to the therapeutic perfluorocarbon oxygen carrying compound, Oxycyte®, consisting of perfluoro(tert-butylcyclohexane);

WHEREAS, Company possesses the expertise to manufacture perfluoro(tert-butylcyclohexane) and has developed the processes necessary to manufacture perfluoro(tert-butylcyclohexane) in commercial quantities of cGMP quality (as that term is defined below) from chemical raw materials through a Development Agreement entered into between the parties, whose effective date was February 24, 2011; and

WHEREAS, OBI and Company desire to enter into this Agreement to provide for Company to manufacture and supply cGMP quality perfluoro(tert-butylcyclohexane) ("Product") exclusively to OBI for use as the primary component of Oxycyte® for research and commercial purposes.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants and undertakings contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OBI and Company, intending to be legally bound, hereby agree as follows:

1. Scope: Company agrees to provide and sell to OBI such quantities of Product as OBI may order in accordance herewith. Company shall furnish and be responsible and liable for all that is necessary or required to supply the Product, including without limitation all supervision, administration, coordination, labor and other services, machinery, equipment, materials, supplies and other goods, licenses, permits, approvals and documents, all in accordance with this Agreement and the applicable Purchase Order, the form of which is to be substantially similar to the sample provided for in **Exhibit H**, attached hereto and incorporated herein by reference.

2. Performance of Supply:

   a. Definitions: The defined terms used in this Agreement shall have the meanings set forth in **Exhibit A**, Definitions, attached hereto and incorporated herein by reference. Any terms defined elsewhere in this Agreement shall be given equal weight and importance as though set forth in the Definitions.

   b. Supply Terms & Conditions: Company shall supply the Products pursuant to the terms and conditions of this Agreement, including without limitation, the Supply Terms & Conditions, attached hereto as **Exhibit B**, and the Purchase Schedule, attached hereto as **Exhibit D**, each incorporated herein by reference. All Product required to meet cGMP-grade Product shall mean the product is manufactured under a c-GMP compliant quality system.

   c. Compliance: Company agrees that it shall perform all of its obligations hereunder in accordance with any timelines provided herein and supply the Products consistent with the Purchase Specifications, attached hereto as **Exhibit C**, and in accordance with Applicable Laws for the country of manufacture. Where Product is to be supplied to another country, OBI shall be responsible for providing Company, in writing, any revisions to the Specification needed to comply with the alternate country's regulations and Company shall use reasonable efforts to comply with such country's regulations. Upon receipt, Company shall provide OBI with written notice if unable to meet such specifications or, if additional costs will be incurred, the costs of which the Parties shall mutually agree upon prior to the commencement of the work. Company shall manufacture the Products at the manufacturing site identified in the Purchase

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Schedule and Company shall not change the manufacturing site, or the materials, process or plant used in the manufacture of the Products without first obtaining the written consent of OBI to such change.

d. Quantity and Orders:

i. Company shall supply Products to OBI in accordance with Purchase Orders that OBI may issue to Company from time to time. Purchase Orders shall specify the quantity of the Product(s) to be purchased by OBI, the place of delivery, the delivery date, and price. If there is any inconsistency between the provisions of this Agreement and any Purchase Order, the provisions of this Agreement shall control.

ii. Company shall notify the OBI Official Correspondent immediately of any anticipated lead times between placing a Purchase Order and delivery of the Products ordered therein, or of any occurrence that would inhibit Company's ability to supply the Product(s) to OBI on a timely basis.

iii. Any special terms or conditions shall be provided on an Appendix to the Purchase Order. Such Appendix shall require the signed consent of both Parties prior to the Purchase Order becoming effective.

3. Term: This Agreement shall commence as of the Effective Date and, unless earlier terminated as provided for in the Supply Terms & Conditions, shall expire upon the third (3rd) anniversary of the Effective Date unless extended by a written mutual agreement of the Parties.

4. Exclusivity and Product Pricing:

i. During the Term and any extensions thereafter, Company expressly agrees as follows:Company will manufacture Product exclusively for OBI;

ii. Company shall not enter into any agreements or assume any obligation to manufacture Product through or for any other company or entity for any reason. By way of clarification and not limitation, any trade secrets or other Confidential Information required to manufacture Product will not be provided to any company, including their employees, Directors, officers or agents for any purpose other than for the purpose of meeting the obligations for Product supply to OBI.

iii. OBI will purchase Product exclusively from Company. By way of clarification, OBI, or any of its affiliates will not use a third party to purchase Product on OBI's behalf from a source other than Company. For purposes of this section, "Purchase Product" shall mean the payment of currency or equity as consideration for the receipt of Product, but shall expressly exclude those transactions where the predominate purpose of the agreement is for the rendering of services rather than the provision of goods/Product, even though such agreements may result in OBI's receipt of Product.

iv. A breach of this Section 4 will be a material breach of the agreement and the damages for such are difficult to measure. Therefore, upon breach of this Section 4, in addition to any other remedies available under this Agreement, OBI and Company expressly agree and hereby consent to the following:

1. Breach by Company:

a. OBI may immediately terminate this Agreement; and

b. Company shall refund to OBI all monies received under this Agreement; and

c. Company shall ship to OBI, at Company's sole expense, all work in process and finished Product in its possession at the time of breach; and

d. Company shall be liable for all costs incurred by OBI to have Product manufactured by an alternate provider in the same quantities and quality as Company is obligated to provide hereunder, such costs to include any development work required by alternate provider to upgrade facilities in order to meet the production requirements for supplying Product and any increase in costs for providing the Product.

2. Breach by OBI:

a. Company may immediately terminate this Agreement; and

b. OBI shall pay to Company all amounts due at the time of breach.

c. OBI will not be relieved of its obligation to purchase the minimum amount of product as shown in **Exhibit** D for the Term of the Agreement.

d. OBI shall be liable for all costs incurred by Company for additional capacity needed to meet the Product needs of OBI including the costs associated with facility upgrades, development work required for scale-up and equipment costs.

v. During the Term, OBI shall pay Company for the Products provided in accordance with the pricing provisions contained in Purchase Schedule. Unless otherwise expressly provided in the Purchase Schedule, the prices set forth on the Purchase Schedule do not include shipping and delivery costs, taxes applicable to the sale of the Products (including, without limitation, all sales, transfer, excise, value-added or similar taxes) duties, customs, imposts and tariffs.

vi. In no event will OBI be responsible for charges arising out of or resulting from any (i) error, omission or mistake of Company or a supplier of Company, (ii) defective or non-conforming performance of Company's obligations under this Agreement, or (iii) failure of Company to meet conditions warranted under this Agreement.

5. Technology Escrow:

a. Within sixty days of execution of this Agreement, Company shall enter into a written agreement with ExFluor to secure a non-exclusive, worldwide licensing right to the technology owned by ExFluor for the manufacture of Product, such agreement to remain in effect for the duration of this Agreement and to include the right to maintain the technology in an Escrow account under terms and conditions provided herein.

b. Within thirty days Company will review and update as needed the documentation placed by ExFluor into an escrow account held by Iron Mountain for the manufacturing processes used to produce Product to confirm it contains sufficient detail to allow another party the capability of manufacturing Product with

the information provided ("Manufacturing Technology"). Thereafter, Company shall maintain all Manufacturing Technology.

c. Any modifications to the manufacturing process, including, but not limited to changes to raw materials, sub-components, or configuration of the Product will require an update to the Manufacturing Technology documentation held in escrow such that at any given time the Manufacturing Technology is current as to the last shipment of Product.

d. The parties will take all steps necessary to transfer the Escrow Agreement with an effective date of May 13, 2010, attached hereto as Exhibit E, from ExFluor to Company, or should a transfer not be possible, enter into a separate Escrow Agreement between OBI and Company, the terms to provide for immediate release of the Manufacturing Technology to OBI, and provide to OBI a perpetual, non-exclusive, license to use the Manufacturing Technology to make or have made Product when one or more conditions in the subsections below occur (each a "triggering event"). The license is limited to use of the Manufacturing Technology solely for the purpose of manufacturing Product for OBI and does not include a right to sell or otherwise transfer the Manufacturing Technology to any third party, unless such party is a successor to OBI in the event of a merger or acquisition. Triggering Events:

   i. Company formally dissolves the business; or

   ii. Company files for bankruptcy protection where the assets are given to a Bankruptcy trustee; or

   iii. Creditors take action to secure rights against Manufacturing Technology to satisfy a financial obligation. For purposes of this Agreement, Company shall not offer exclusive rights to the Manufacturing Technology as security for any financial obligation and will notify OBI if they have done so prior to execution of this Agreement; or

   iv. Company enters into any merger or acquisition arrangement which does not specifically require the new business entity to become successor to the obligations of this agreement; or

   v. If Company notifies OBI that they are unable or unwilling to manufacture Product, with or without the use of subcontractors, for sixty (60) days or more.

e. If any of the above "triggering events" (i) through (iv) occur, a royalty fee consisting of three percent (3%) of the purchase price of Product, shall be paid annually and is due within sixty (60) days of the end of such calendar year. If "triggering event" (v) occurs, no royalty fee shall be due.

f. OBI shall bear the costs of setting up and maintaining the escrow account.

g. The Parties acknowledge that Company has a written agreement with FluoroSeal International LLC ("FluoroSeal") for a limited, non-exclusive, licensing right to the technology owned by FluoroSeal for the manufacture of the essential raw material Elemental Fluorine. The provisions in this section expressly exclude the transfer of any right to the technology for the manufacture of Elemental Fluorine to OBI, but shall require Company to maintain the licensing right to manufacture Elemental Fluorine during the Term of the Agreement.

6. Available Inventory; Supply Capacity:

a. Company shall maintain a twelve (12) month an on-hand inventory of t-butyl benzene, or such other material as may be used in its stead, (based on the amount of Product ordered by OBI during the previous twelve (12) month period), which inventory shall be dedicated and solely allocated to the manufacture of

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the Product. Notwithstanding the foregoing, in no event shall such inventory on-hand be less than that required to manufacture six hundred (600) kilograms of Product.

b. Company represents and warrants that its existing facility has and will maintain the capacity to produce forty kilograms (40kg) of cGMP Product per month, and contingent upon receiving necessary permits, within one hundred eighty (180) days of a written request by OBI, said request based upon Company's estimated needs for additional manufacturing capacity, such capacity will be increased and maintained at up to eighty kilograms (80kg) GMP Product per month, at Company's sole expense.

7. Guaranty of Supply:

a. Company guarantees that it shall supply the quantity of Products requested by OBI during the Term of this Agreement. In the event Company is unable or unwilling to supply the quantity of Products requested by OBI, Company shall provide immediate written notice to OBI. In the event this Agreement terminates for any reason other than OBI's failure to pay undisputed amounts, OBI shall be entitled to receive a last time supply commitment from Company, to the extent Company remains capable of supplying Product, to deliver to OBI a quantity of Product up to the amount of Product realizable from the t-butyl benzene inventory on-hand as of the date of termination at the price provided in Section 4(b). Changes to license, permits or other regulatory requirements implemented after the Effective Date of this Agreement may hinder availability of Supply. Should such circumstances occur, Company shall notify OBI in a reasonable period of time and the parties shall mutually agree on a revised date for Product availability. If the parties are unable to reach a mutual agreement, then the event shall be deemed a Force Majeure and the provisions of Section 17 of **Exhibit B** shall prevail.

8. Allocation: If, due to a Force Majeure Event or if due to any other shortage not reasonably foreseeable, the quantity of one or more raw materials utilized to manufacture Products available at Company's (or Company's supplier's) facility ordinarily producing Products and deliverable for sale hereunder should be insufficient to fulfill Company's Product volume commitments, Company shall notify OBI as soon as possible, explaining the underlying reasons for such shortage, proposed remedial measures, and the date the shortage is expected to end. Company has the right and obligation to allocate its available supply of raw materials equitably among all term contract customers of Company during the period of such shortage. In order to achieve an equitable allocation result, Company shall consider its customers' supply alternatives, and if the allocation is expected to cause greater hardship to OBI due to its dependence on Company as a majority supplier (if true), then Company's allocation arrangements will reflect OBI' greater need for Company's Products. No consideration shall be given to Company's own requirements for such raw materials.

9. Assignment: This Agreement may not be assigned by either Party to any other Party without the prior written consent of the other Party hereto; provided, however, that OBI may assign its rights and obligations hereunder, by written notice to Company, to a successor or transferee (whether by merger, consolidation, purchase or otherwise) of either all, or substantially all, of the assets of OBI. Any purported assignment in violation of this provision shall be void from the beginning.

10. Severability: If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

11. Entire Agreement: This Agreement, with all exhibits hereto (including without limitation, any Purchase Order) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties (whether written or oral) relating to the subject matter hereof; provided, however, in the event the Parties have entered or subsequently enter a separate confidentiality agreement related to the subject matter hereof, the provisions with respect to confidentiality obligations shall be cumulative. In the event of a conflict between the terms and conditions of this Agreement and any exhibit (including without limitation, any Purchase Order), the terms of this Agreement shall control.

12. Amendments: No modification of this Agreement shall be effective unless made in writing and signed by a duly authorized representative of each Party.

13. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles, and the Parties hereby submit to the exclusive jurisdiction of the North Carolina courts, both state and federal.

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

OXYGEN BIOTHERAPEUTICS, INC.

By: _____

Name: Nancy J.M. Hecox

Title: VP Legal Affairs, General Counsel

FLUOROMED LP

By: _____

Name: William S. Brown

Title: _____

EXHIBIT A

Definitions

a. ***"Act"*** means the United States Federal Food, Drug and Cosmetic Act, 21 C.F.R. § 210 *et seq.*, as amended.

b. ***"Adverse Event"*** means any adverse event associated with the use of the Product in a human, whether or not considered drug-related.

c. ***"Affiliate"*** means, with respect to a Party, any individual, corporation or other business entity which, either directly or indirectly, controls such Party, is controlled by such Party, or is under common control with such Party. As used herein, "control" means possession of the power to direct, or cause the direction of the management and policies of a corporation or other entity whether through the ownership of voting securities, by contract or otherwise.

d. ***"Agreement"*** means this Supply Agreement, and all exhibits attached hereto including all accepted Purchase Orders that expressly reference this Supply Agreement.

e. ***"Applicable Law"*** means (i) any international, country, federal, state, provincial, commonwealth, municipal or local government law, statute, rule, requirement, code, regulation, permit, ordinance, authorization or similar such governmental requirement and interpretation and guidance documents of the same by a Governmental Authority as applicable to the manufacture or supply of Products hereunder; and (ii) any of OBI compliance, safety and security rules, programs and policies as applicable to Company or this Agreement which have been provided to Company and which Company has not objected to in writing prior to manufacturing or shipping Product. Should Company provide notice of objection, the parties shall use reasonable efforts to resolve the issues. .This section is subject to the provisions of Sections 2(c) and 7(a) of the Supply Agreement.

f. ***"Business Day"*** means any day other than a day which is a Saturday, Sunday, or federal bank or federal government holiday in the United States.

g. ***"Certificate of Analysis"*** means a certificate in form and substance satisfactory to OBI, which will be substantially similar to the sample provided in **Exhibit I** attached hereto, and which shall be signed by the Company Official Correspondent or designee, and authenticating the analysis of each batch of the Product delivered to OBI.

h. ***"cGMP-grade Product"*** means Product, manufactured, handled, stored, and delivered in accordance with Current Good Manufacturing Practices. Process validation is not required until OBI begins to use Product for Phase III clinical trials. Additional Product-specific cGMP requirements are provided in Exhibit G, attached hereto and incorporated herein by reference.

i. ***"Company Official Correspondent"*** means Dr. Timothy J. Juhlke, Vice President.

j. ***"Current Good Manufacturing Practices"*** or ***"cGMPs"*** means (i) the applicable regulatory requirements, as amended from time to time, for current good manufacturing practices, including without limitation those promulgated by the Food and Drug Administration under the Act or under the Public Health Service Act, Biological Products, 21 C.F.R. §§ 600-610, and its associated regulations; (ii) any applicable guidance documents published by a Governmental Authority; and (iii) current industry practice consistent and in accordance therewith.

k. **"Facility"** shall mean Fluoromed's manufacturing facility located at 2350 Double Creek Dr., Round Rock, Texas 78664

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l. ***"Governmental Authority"*** means any nation or government, any state, province, or other political subdivision thereof or any entity with legal authority to exercise executive, legislative, judicial, regulatory or administrative functions or pertaining to government in any of the relevant markets.

m. ***Manufacturing Technology*** means all intellectual property, including know how, used to manufacture Product.

n. ***"Product"*** means those materials to be supplied by Company to OBI as described in the Purchase Schedule, manufactured in accordance with the Purchase Specifications.

o. ***"Purchase Order"*** means any purchase order issued by OBI in accordance with the terms and conditions of this Agreement, which is substantially similar to the sample provided as **Exhibit H**.

p. ***"Purchase Schedule"*** means the purchase schedule containing the Products, applicable prices, and manufacturing site, attached hereto as **Exhibit D** and incorporated herein by reference.

q. ***"Purchase Specifications"*** means the specifications set forth in **Exhibit C**.

r. ***"Supply Terms & Conditions"*** means the terms and conditions governing the supply of Products, attached hereto as **Exhibit B**, and incorporated herein by reference.

s. ***"OBI Official Correspondent"*** means Nancy J. M. Hecox, Sr.Vice President Legal Affairs, General Counsel.

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EXHIBIT B

SUPPLY TERMS & CONDITIONS

1. Shipping:

   a. Company shall ship the Product purchased by OBI to that location set forth in the applicable Purchase Order (the ***"Destination Point"***).

   b. Company shall furnish Product within the time established in the applicable Purchase Order. Time is of the essence in relation to the performance of any and all of Company's obligations pursuant to this Agreement and to each Purchase Order. Product shall be deemed delivered on time if delivered in accordance with Purchase Order terms (including location, specifications, requirements and date). A delivery of Product that does not meet the specifications of **Exhibit C** or a delivery to an improper location, shall be deemed a late delivery ***("Late Delivery")***. Company agrees to use its best efforts to meet any request by OBI for delivery of Product prior to a delivery date stated in the applicable Purchase Order. Company shall notify OBI of any Late Delivery and specify the estimated delivery date and the circumstances causing the delay, keeping OBI informed about the status of the Late Delivery. For purposes of this section, the parties agree that Exhibit C may be modified from time to time and such modifications shall be binding and shall become incorporated herein once they have been approved in writing by both parties. No amendment to this Agreement is required for such modifications.

   c. Unless the Parties otherwise agree in writing, Product delivered to OBI under this Agreement shall be shipped from the manufacturing facility identified in the Purchase Schedule. A carrier approved by OBI in writing shall deliver the Product via the mode of transportation indicated by OBI on the applicable Purchase Order.

   d. All Products shipped by Company shall be shipped FOB/FCA Shipping Point stated in the applicable Purchase Order (as defined in INCOTERMS, 2000). OBI shall be solely responsible for all transportation expenses and risk of loss or damage to Product. Company shall ship Product in compliance with OBI's shipping instructions. Company shall pay for transportation costs when Product is returned to Company by OBI due to failure to meet Purchase Specifications.

   e. Company shall pack and ship all Product in accordance with the Specifications to ensure that no damage shall result in shipping.

   f. All chemicals delivered by Company shall bear a label stating the identity of the chemical and standard hazard symbols customarily required for the transport of chemical products. Such chemicals shall be accompanied by the Material Safety Data Sheet ***("MSDS")*** provided by the manufacturer of the chemical.

2. Invoice Payment:

   a. Company shall prepare and deliver to OBI an invoice for each shipment of Product purchased hereunder. All invoices shall be submitted in writing to:

      Oxygen Biotherapeutics, Inc
      Attention: Accounts Payable
      ONE Copley Parkway, Suite 490
      Morrisville, NC 27560

      Or via email to AP@oxybiomed.com, with cc to n.hecox@oxbiomed.com

      or if different, in accordance with OBI's written instructions.

   b. All invoices shall be submitted contemporaneously with or subsequent to the shipment of the Products. The invoices shall specify the price in respect of the Product delivered, the Purchase Order number, the quantity of Product delivered, and the invoice amounts shall be stated and paid for in the currency of the United States. In no event shall any invoice be dated prior to the date of shipment of the related Product.

   c. Payment terms for each undisputed shipment of Product shall be net thirty (30) days from the date of invoice, provided that no invoice shall be dated prior to the delivery of and acceptance corresponding Products. Payment due shall be net of any and all credits due to OBI, including without limitation, credit for returns, recalls, and/or warranty replacements.

3. Notice of Claim or Rejection:

   a. In the event that OBI learns, or should reasonably learn of any claim with respect to Product, OBI will inform Company in writing of the claim. In the event that a shipment of Product fails to conform to Purchase Specifications or to meet any warranty hereunder, OBI, at its option and at the expense and risk of Company, shall notify Company and return such Product to Company or store them pending instructions from Company as to their disposal. The payment obligation in relation to any such delivery may be suspended forthwith pending resolution of any dispute with respect to defective Products. Neither payment nor passage of title or risk of loss to the Product(s) to OBI shall be deemed to constitute acceptance of the Product). Failure to make such notification shall not be deemed to constitute acceptance

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of the delivered lot of Products. Acceptance of any lot of Product shall not relieve Company of its warranty obligations under this Agreement.

b. Company agrees (at OBI's option) to refund the purchase price thereof or replace any shipment rejected pursuant hereto with new Product within ten (10) business days for US shipments and thirty (30) days for international shipments, after receipt of notice of rejection and supporting data thereof free of charge. Company shall be responsible for shipping within such time period any replacement Product and delivery of same to the rejecting Destination Point. If the Out-of-Specification Product is not replaced within such ten (10) or thirty (30) business days (as applicable) or within the timeframe agreed upon by the Parties, OBI shall have the right to terminate this Agreement, effective immediately upon notice to Company.

4. Specifications; Quality:

a. Company shall label and package Product in accordance with the provisions of all US Laws, and Purchase Specifications, as applicable.

b. Product delivered pursuant to this Agreement shall comply with the Purchase Specifications. A Certificate of Analysis showing the OBI Purchase Order number, size and description, lot or batch number, and the specifics of the analysis shown in Exhibit C, will be provided by Company with each lot of Product. Company shall also provide applicable documentation to show that cGMP Product meets all required regulations governing such designation.

c. Subject to Applicable Laws, neither the Purchase Specifications, nor any change in any Product that may alter its properties, impurities, or any other characteristic of the Products, may be changed without OBI' prior written consent. Company shall consider all requests made by OBI to change the Purchase Specification. Company shall not make any substitutions for Product ordered without the prior written approval of OBI.

d. Company shall ensure that quality assurance tests and documentation agreed by the Parties from time to time are adopted.

e. Company shall retain samples of each batch of the Product for a period not less than five (5) years.

5. Recalls:

a. Company shall investigate all reports of nonconformity and Product complaints relating to materials in order to assure the conformity of Products to Purchase Specifications.

b. In the event Company believes that a recall, product withdrawal or field correction by OBI may be necessary or appropriate, Company shall promptly notify OBI and the Parties shall cooperate in determining the necessity and nature of such action.

c. With respect to any recall, product withdrawal or field correction OBI shall make all statements to the media and the public, including but not limited to press releases and interviews. Company will not issue any press release or otherwise make any public statement, advertisement or disclosure with respect to this Agreement, any of the Products, or any recall, product withdrawal or field correction relating to any product manufactured by OBI containing Products without the prior written consent of OBI such consent not to be unreasonably withheld; provided, however, that either Party shall be entitled to make a public announcement relating to such events if, in the opinion of the announcing Party's legal counsel, such announcement is required to comply with Applicable Laws and provided to the extent practicable that the other Party has received not less than two (2) business days notice.

d. If any recall, product withdrawal, or field correction is initiated because the Product failed to meet the Purchase Specification, Company shall replace such effected Product at Company's sole expense, including all shipping and related costs.

e. OBI shall have the right to audit and inspect all inventory and related documentation of the Product contained at Facility. Such audits or inspections shall occur not more than once per year (unless for cause), shall occur during business hours and shall be scheduled by OBI at least ten (10) days in advance. Purposes for such inspections may include compliance with Purchase Specifications, and/or investigations of complaints and/or compliance with any Laws or the terms of this Agreement. OBI's audit and inspection rights hereunder shall not extend to any portions of such facility, documents, records or other information: (i) which do not relate to the Product, or (ii) to the extent they relate or pertain to third parties or their products or materials.

6. Regulatory and Environmental Compliance:

a. To the extent an Adverse Event of which a Party becomes aware implicates manufacturing of the Product, such Party shall promptly inform the other Party of such Adverse Event and shall disclose to the other Party any information it has regarding that Adverse Event.

b. If any Governmental Authority shall take any action which shall require a response or action by Company with respect to Product, Purchase Specifications, or the manufacturing facility at which Product is manufactured, or any operating procedure affecting the Product, Company shall immediately notify OBI of the required response or action.

c. In carrying out its obligations under this Agreement, Company shall comply in all respects with Applicable Laws in effect from time to time.

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d. Company is solely responsible for the safety and health of its employees, consultants and visitors and compliance with all Applicable Laws related to health, safety and the environment, including, without limitation, providing its employees, consultants and visitors with all appropriate information and training concerning any potential hazards involved in the manufacture, packaging, storage and supply of the Product and/or materials and taking any precautionary measures to protect its employees from any such hazards

7. Confidential Matters:

a. During the course of the performance of this Agreement, either Party (as ***"Discloser"***) may disclose certain information relating to this Agreement to the other Party (as ***"Receiver"***). Receiver shall keep in strictest confidence all information relating to this Agreement which may be acquired in connection with or as a result of this Agreement which has been designated as proprietary to Discloser or which from the surrounding circumstances in good conscience ought to be treated as proprietary to Discloser (***"Confidential Information"***). During the Term of this Agreement and for five (5) years thereafter, without the prior written consent of Discloser, Receiver shall not publish, communicate, divulge, disclose, or use any Confidential Information, except as otherwise provided herein. Upon termination or expiration of this Agreement, Receiver shall deliver all records, data, information, and other documents and all copies thereof of Discloser, to Discloser, and such shall remain the property of Discloser. Purchase Specifications and changes to the Purchase Specifications shall be treated as Confidential Information by both Parties.

b Nothing herein shall be construed to impose an obligation of confidentiality on Receiver in connection with any information to the extent such information:

i is at the time of disclosure already known to Receiver, as clearly established by competent proof;

ii is at the time of disclosure or subsequently becomes part of the public domain through no fault, act or omission by Receiver; or

iii is subsequently disclosed to Receiver by a third party whose receipt and disclosure of such information does not constitute a violation of any confidentiality obligation

c. The obligations of confidentiality imposed on Receiver herein shall survive any termination or expiration of this Agreement

d. In the event Receiver is asked or subpoenaed by a Governmental Authority to provide Confidential Information received hereunder, Receiver shall promptly inform Discloser and shall cooperate with Discloser to obtain any and all protection that may be afforded such Confidential Information, prior to disclosing it, if such disclosure is ultimately required.

e. Receiver shall, upon request by Discloser, return all Confidential Information received hereunder, except, and only upon written request by Receiver, for one (1) photocopy that may be kept in its legal archives solely for the purpose of monitoring Receiver's obligations hereunder, provided such photocopy is reasonably secured to maintain the confidentiality thereof.

f Each Party shall maintain the confidentiality of this Agreement and all provisions of this Agreement and, without the prior consent of the other Party, no Party shall make any press release or other public announcement of or otherwise disclose this Agreement or any of its provisions to any third party (a) other than to its directors, officers and employees and attorneys, accountants, investment bankers and other professional advisers whose duties reasonably require to maintain the confidentiality of this Agreement and (b) except for such disclosures as may be required by applicable law or by regulation, in which case the disclosing Party shall provide the other Party with prompt advance notice of such disclosure so that the other Party has the opportunity if it so desires to seek a protective order or other appropriate remedy

8. Termination:

a. Either Party shall have the right to terminate this Agreement immediately upon notice in the event the other Party ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against the other Party, or a receiver is appointed for the other Party.

b. Either Party may terminate this Agreement in the event of breach of a material obligation of the other Party if such breach remains uncured thirty (30) days after written notice of such breach is delivered to such breaching Party.

c Upon termination of this Agreement, Company shall promptly pay to OBI any credits due to OBI and OBI shall promptly pay to Company all undisputed amounts then due and payable

d. Except as otherwise provided for, neither Party shall make a claim against, nor be liable to, the other Party for any indirect, special, incidental, consequential or punitive damages, in connection with or arising out of this Agreement or the termination of this Agreement, under contract, tort or any other theory of law, including without limitation, damages for lost profits business opportunity or other losses, or injury to reputation, resulting from a Party's action or inaction taken in anticipation of the execution of this Agreement and of the undertaking of such Party's obligations hereof, regardless of the cause of action under which such damages may be sought

e. The respective rights and obligations of the Parties hereunder shall survive the termination or expiration of this Agreement to the extent necessary for the intended preservation of such rights and obligations including, but not limited to, insurance, indemnification, confidentiality,

regulatory compliance, records retention, audit rights, and recall responsibilities.

9. Representations and Warranties:

   a. Company represents and warrants that the execution and delivery of this Agreement and the performance of its obligations hereunder (i) do not conflict with or violate any requirement of applicable laws or regulations, and (ii) do not conflict with, or constitute a default under, any contractual obligation of Company.

   b. Company warrants title to Products sold hereunder to be free and clear of all liens, encumbrances and/or colorable claims at the time of delivery. Company further warrants that all Product shall conform to applicable Purchase Specifications. Company further warrants that in the performance of this Agreement, Company has complied or will comply with all Applicable Laws.

   c. Company represents and warrants that neither the design, the manufacture, nor the function of the Products nor the provision, use, or sale thereof shall in anyway infringe upon or violate any intellectual property rights or other rights of any third party under United States patent laws.

10. Indemnity: Each Party shall indemnify and hold harmless the other Party, its successors, Affiliates, shareholders, officers, directors, employees, agents, representatives and assigns, from and against any and all claims, liability, suits, damages, loss, costs, fines, penalties and expenses, including but not limited to attorney's fees and litigation costs (***"Claims"***), to the extent such Claims are caused by or alleged to have been caused by (i) the acts or omissions of the indemnifying Party or any of its agents, employees, representatives, subcontractors or invitees; (ii) the indemnifying Party's negligence or misconduct in the performance of this Agreement; (iii) any breach of this Agreement by the indemnifying Party or any of its agents, employees, representatives, subcontractors or invitees; or (iv) third party claims of patent infringement by the indemnifying Party with respect to the Product. Such acts and omissions may include, but are not limited to, strict liability, breach of contract or warranty, or statutory violation. The indemnifying Party shall endeavor to amicably settle all Claims asserted by any other person or entity arising from such acts or omissions; provided, however, that the indemnifying Party shall obtain the written consent of the indemnified Party prior to settling or otherwise disposing of any claim.

14. Insurance: During the Term of this Agreement and for two (2) years after its expiration or termination for any reason, both Parties, at its own expense, shall maintain in full force and effect, general liability and such other insurance sufficient, to address liabilities arising from performance under this Agreement. Either Party shall have the right to review the other Party's insurance certificates therefore.

15. LIMITATION OF LIABILITY: EXCEPT AS PROVIDED FOR IN SECTION 4 ABOVE, NEITHER PARTY OR AFFILIATE COMPANIES SHALL BE LIABLE TO THE OTHER PARTY IN CONTRACT OR IN TORT FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RESULTING FROM PERFORMANCE HEREUNDER, EXCEPT TO THE EXTENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF SUCH PARTY, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS.

16. Subcontracting: Company shall not enter into a subcontract with respect to the subject matter of this Agreement, without the prior written consent of OBI. No such written consent shall relieve Company from any of its obligations or liabilities hereunder. Nothing herein shall constitute any contractual relationship between OBI and any subcontractor of Company or any obligation on the part of OBI to pay, or be responsible for the payment of, any sums to any such subcontractors. Company shall be responsible for all work performed by, and for acts, omissions, or negligence of its subcontractors and for compliance of its subcontractors with the requirements of this Agreement, and all Laws to the same extent that Company would be responsible if Company were doing such work directly.

17. Force Majeure: Subject to the provisions of this Section 17, if supervening events, including, but not limited to, acts of God, acts of the public enemy, terrorist acts, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of natural resources or of energy, or other similar causes that are unforeseeable, beyond the reasonable control of, and without the fault or negligence of the Party so affected (each, a "Force Majeure Event"), occur that render performance by such Party under this Agreement impossible, then such party is excused from whatever performance is rendered impossible by the Force Majeure Event ("Suspension of Performance"); provided that: (i) such Party informs the other Party within ten (10) business days of such Force Majeure Event; (ii) such Party promptly informs the other party of the length of the expected delay; (iii) such Party takes all reasonable actions to avoid or overcome such Force Majeure Event, to mitigate damages hereunder, and to mitigate the length of any such Suspension of Performance; and (iv) such Party, to the extent it is able, continues to perform its obligations under this Agreement, unless otherwise directed by the other Party. A Party's performance of covenants (i) and (ii) herein are conditions precedent to its Suspension of Performance and covenants (iii) and (iv) herein are conditions precedent to its continued Suspension of Performance. Force Majeure Event does not include inability to perform due to the volume of business at Company, economic hardship, changes in market conditions, or insufficiency of funds. If the Suspension of Performance continues, or is expected to continue, for more than sixty (60) days, then the other party is entitled to terminate this Agreement upon giving notice thereof to the party which is excused by the Suspension of Performance. Unavailability of materials, equipment or transportation that is caused by a Force Majeure Event are included in these provisions unless they are caused by insufficiency of Company funds or inability to negotiate pricing terms.

18. Notice: Any notice required or permitted under this Agreement shall be given to the receiving Party in writing (i) by (A) delivery in hand, facsimile transmission (receipt verified), or by postage prepaid, United States first class

mail with proof of mailing, and (B) registered or certified mail, return receipt requested, or (ii) by recognized national overnight courier service to each respective Party's Official Correspondent with a copy to :

OBI:

ONE Copley Parkway
Suite 490
Morrisville, North Carolina 27569
Attn: VP Legal Affairs

Company:

2350 Double Creek Dr.
Round Rock, TX 78664
Attn: Timothy Juhlke

In addition, in the event that correspondence with other personnel of OBI becomes necessary, copies of such correspondence shall be sent to the Official Correspondent so that the Official Correspondent may keep a complete file

19. Independent Contractor: In all matters relating to this Agreement, the Parties shall be acting as independent contractors. Neither Party shall have any authority to and shall not assume or create any obligation, express or implied, on behalf of the other Party and shall have no authority to and shall not represent itself as an agent, employee, or in any other capacity of such other Party.

20. Use of Trade Name and Trademarks: Each Party recognizes that the name of the other Party represents a valuable asset of such other Party and that substantial recognition and goodwill are associated with such trade name and such Party's various trademarks. Each Party hereby agrees it shall not use the name, insignia, symbol, logo or other identifying information of the other Party hereto orally, writing or in electronic format in any advertising, press release, promotional materials or otherwise without the prior written consent of such other Party, except as required by Law. Nothing in this Agreement constitutes a license entitling a Party to use the other Party's name, logos or trademarks.

21. No Third Party Beneficiaries: No provision of this Agreement shall in any way inure to the benefit of any third person so as to constitute to any such person a third-party beneficiary of this Agreement or otherwise give rise to any cause of action in any person not a party hereto.

22. Waiver: Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then-existing or subsequent breach. All waivers by either Party must be contained in a writing signed by the Party to be charged, by an executive officer of or other duly authorized person

23. Remedies: Unless otherwise set forth herein, the rights and remedies set forth in this Agreement are cumulative with and not exclusive of any other remedy. The exercise by either Party of any right or remedy conferred by this Agreement does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or in equity or by statute or otherwise.

24. Injunctive Relief: The Parties recognize and agree that remedies at law for breach by the other Party of its obligations hereunder with respect to confidentiality, indemnification, and use of trade names and trademarks may be inadequate and each Party shall, in addition to any other rights which it may have, be entitled to injunctive relief.

25. Headings and Plural Terms: The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of text. Terms defined in the singular have the same meaning in the plural and vice versa, as applicable.

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EXHIBIT C

PURCHASE SPECIFICATIONS

FluoroMed, LP

2350 Double Creek Drive
Round Rock, Texas 78664

SPECIFICATION

Subject to modification as provided for in Exhibit B, Section 1(b)

Product Name:	Perfluoro(t-butylcyclohexane), high purity
Part Number:	APF-150M
Chemical Formula:	$C_{10}F_{20}$
Appearance:	Clear colorless liquid, no visible particles
Identity:	Conforms to Reference Standard
Perfluoro(t-butylcyclohexane) Content:	≥ 96.0 Area %
Related Compounds Content:	Identity and Specification of each Related Compound to be determined prior to first cGMP batch
Residual Conjugated Olefin:	≤ 1 PPM
Residual Free Fluoride:	≤ 1 PPM
Residual Organic Hydrogen:	≤ 10 PPM

Specifications must be evaluated using analytical methods that are (1) validated specifically for the Product per ICH Q2; (2) performed in a cGMP-compliant manner; and (3) performed at a cGMP-compliant facility.

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Shipping Container Specification: See **Exhibit I** for drawing of specific approved container.

Primary Mfr. & Vendor: Alloy Products, 1045 Perkins Ave, PO Box 529, Waukesha WI 53187
Manufacturer's ID: Five Gallon Pressure Vessel, Drawing No.: C526-0402-00, (9" ID and 2" Round Opening), or equivalent, with a capacity for Product fill of 30kg.
Approved Vendor: Alloy Products
Swagelok Parts: Qty. 2 each: SS-4-P, pipe plug (NPT); SS-400-1-4, male connector (NPT);
and SS-400-P, where the SS in the part no. indicates 316 stainless steel

Any additional packaging requirements may incur additional charges, such charges to be deemed a pass-through expense.

The parties acknowledge OBI currently has two containers on site. Any additional containers will be charged at the rate of $2.30/per container/per day, to be invoiced quarterly with reference to container serial number to be included on each invoice. Upon termination of the agreement, any containers not returned shall be charged to OBI at Company's replacement cost plus twenty percent (20%).

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EXHIBIT D

PURCHASE SCHEDULE

Pricing Formula

a) Price = $1,800/kg with a guarantee to purchase a minimum of 60 kg in the first calendar year and 120 kg in calendar years 2 and 3. If additional capacity is required subject to the provisions of Section 6, OBI agrees to purchase a minimum of one-half of the total capacity requested over the following twelve-month period, and in each subsequent twelve-month period, once the capacity is in place. Invoices not paid within terms are subject to a 1% monthly finance charge.

b) Once OBI has purchased 250kg in the preceding twelve- month period, OBI shall have the option to irrevocably modify the pricing schedule as follows: Price = $1,200/kg plus quarterly fees of $35,000, the first quarterly payment due upon notification to Company of OBI's decision to use this alternate pricing method. Subsequent quarterly payments will be due every three months after receipt of said notification.

WSB

EXHIBIT E

Escrow Agreement

To be supplied per Paragraph 5(a) of the Supply Agreement. WSB

EXHIBIT G

cGMP Requirements

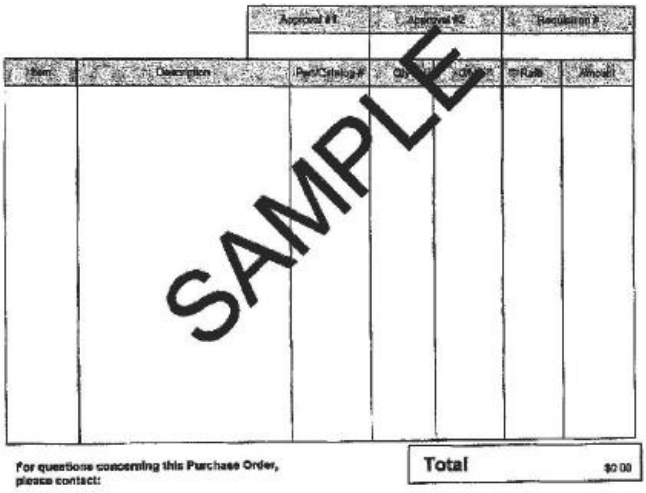
The Parties acknowledge and agree that the following requirements are applicable to the Product being manufactured and are therefore necessary in order for the Product to be deemed cGMP compliant. The following list is not intended to be exhaustive and does not incorporate all of the requirements for cGMP compliance.

1. Procedures shall be in place to ensure that equipment and instruments are calibrated, clean and suitable for their intended use.
    a. The Installation, Operation, and Performance Qualification protocol for the Intermediate ("I") material, Chemical-grade ("C") material, and Medical-grade ("M", or "Product" as applicable) material (jointly, the "Product Family") will be written and executed, based on the design and operating criteria of the Product manufacturing process.
    b. Written procedures will be established and validated for cleaning of equipment utilized in the manufacture or testing of Product Family batches. Cleaning procedures will contain sufficient details to enable operators to clean each type of equipment in a reproducible and effective manner.
    c. All instruments used in either in-process or release testing of Product Family batches will be calibrated and maintained on a regular basis.
2. Facility utilities (e.g. steam, gases, compressed air, and heating, ventilation and air conditioning) shall be qualified and appropriately monitored.
    a. Written procedures will be established specifying acceptable performance ranges and action to be taken when limits are exceeded.
    b. Drawings for these utility systems will be made available to OBI.
3. Critical Quality Attributes and Critical Process Parameters will be defined for the Product Family prior to initiating manufacturing of respective batches to be considered GMP-compliant, and Critical Process Parameter ranges will be specified to ensure reproducible process results and consistent product quality.
    a. Sampling of Process sub-lots, Product Family, and Recovered Solvents will be performed, documented, and trended.
    b. All product specifications for a Product Family product must be defined prior to initiation of GMP-compliant manufacturing of that product.
    c. Analytical methodologies used to confirm in-process specification results, or to confirm batch acceptance results (Critical Quality Attributes, as defined by product specifications for each product in the Product Family), must be validated for the intended purpose and with a representative material.
    d. For each batch of intermediate and API, appropriate laboratory tests will be conducted to determine conformance to in-process and batch acceptance specifications.
4. Manufacturing production processes for the Product shall be performed in areas segregated from the general production area of the Facility in a manner suitable to minimize the risk of contamination, process interference, or other quality related issues.
5. Company will maintain retain samples on all Product Family batches up to and including Process Validation batches, as well as all final API batches.
6. Company will perform cGMP-compliant stability studies on APF-150M batches starting with at least three Process Validation batches. Company will perform GMP-compliant stability studies on commercial batches as required. For all I and C materials, Company will complete process validation and stability studies to generate stability data supporting a one year stability for I and C batches. Thereafter, once I and C batches are made, tested and released, repeat testing will only be performed prior to manufacturing if more than one year has elapsed between testing and manufacturing.
7. Company must, either directly or through a partner, maintain the Drug Master File (DMF) for the Product. This will require
    a. Updating the DMF to show the state of the Product Family prior to initiation of activities by the Company

WAB

b. Providing a copy of the DMF to OBI that provides evidence and justification the Company can manufacture the Product, and appropriate updates as they are available.
c. Creating a Product History Dossier that stores all information collected on the Product Family by and for the Company
d. On-going maintenance of the DMF per regulatory guidelines.

EXHIBIT H – SAMPLE PURCHASE ORDER



ONE Copley Pkwy, Suite 490
Morrisville, NC 27560
main (919) 855-2100
fax (919) 806-4417
oxybiomed.com

Purchase Order

Date P.O. No.

Vendor Ship To

Approval #1	Approval #2	Requisition #

Item	Description	Part/Catalog #	Qty	Cost	ID Rate	Amount

SAMPLE

For questions concerning this Purchase Order, please contact:

Total $0.00

EXHIBIT I – DRAWING OF APPROVED CONTAINER

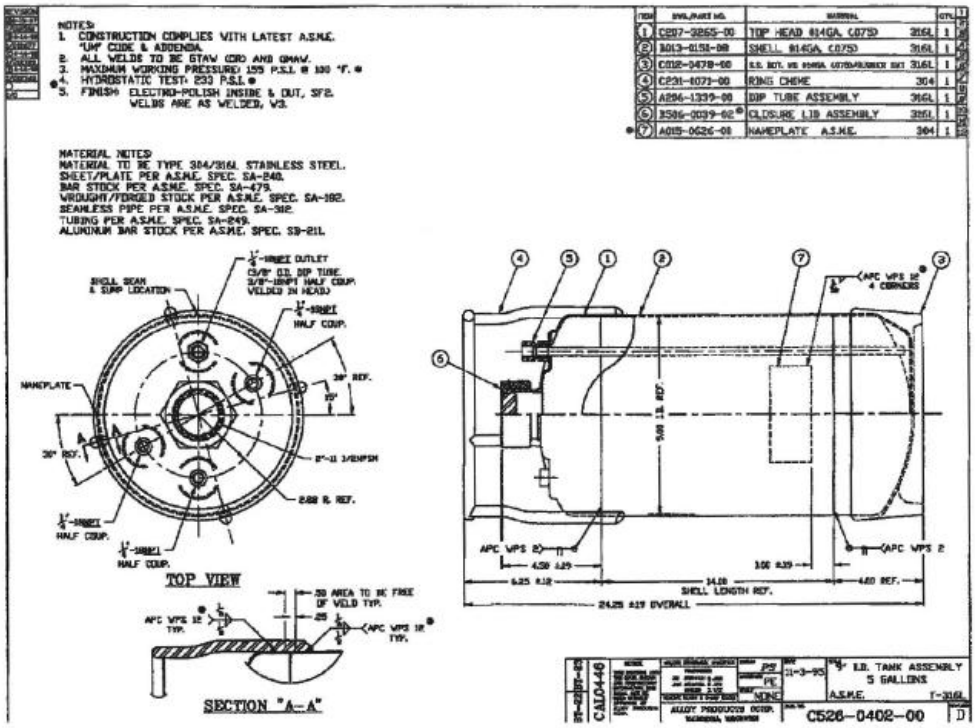


EXHIBIT J – SAMPLE CERTIFICATE OF ANALYSIS

[Fluoromed Header/Footer should include name and manufacturing site address]

CERTIFICATE OF ANALYSIS

Material: Perfluoro-(t-butylcyclohexane), High Purity
Part #: APF-150H
Grade: GMP
Lot #: [lot#]
Manufacture Date: [manufacture date]
PO #: [PO #]
Amount Shipped: [amount] kg

Test	Specification	Result
Appearance	Clear colorless liquid, no visible particles	[Conforms / Does Not Conform]
Identity	Conforms to Standard	[Conforms / Does Not Conform]
Perfluoro(t-butylcyclohexane) Content	≥ 96.0 Area%	[Result]
Related Compounds Content		
[RC 1]	[Spec 1]	[Result 1]
[RC 2]	[Spec 2]	[Result 2]
...	...	...
[RC n]	[Spec n]	[Result n]
Total Related Compounds	[Spec TRC]	[Result TRC]
Residual Conjugated Olefins	≤ 1 ppm	[Result]
Residual Free Fluoride	≤ 1 ppm	[Result]
Residual Organic Hydrogen	≤ 10 ppm	[Result]

Lot# [lot#] Disposition: [Released / Failed / Quarantined]

Retest Date: [retest date]

Issued By: _____ _____
[name] Date
[Quality Unit title]

Version 01

WSB

EXHIBIT F

Development Agreement

WSB

DEVELOPMENT AGREEMENT FOR MANUFACTURING OF cGMP FtBu

with

FluoroMed, L.P.

This Agreement, effective as of February 24, 2011 (the *"Effective Date),* is entered by and between Oxygen Biotherapeutics, Inc., having its principal place of business at 2530 Meridian Pkwy, Suite 3078, Durham, North Carolina 27713 USA *("OBI")* and FluoroMed, L.P. with an address at 2350 Double Creek Dr., Round Rock, Texas 78664 *("Company")*

WHEREAS, OBI is developing and owns rights to the therapeutic perfluorocarbon oxygen carrying compound, Oxycyte®, consisting of perfluoro-tert-butylcyclohexane ("FtBu"); and

WHEREAS, Company possesses the expertise to manufacture FtBu and has developed the processes necessary to manufacture FtBu in commercial quantities from chemical raw materials; and

WHEREAS, OBI and Company have entered into a Confidential Disclosure Agreement, dated February 16, 2011 which is attached hereto as Exhibit 1 and incorporated herein by reference; and

WHEREAS, OBI and Company desire to enter into this Agreement to provide for Company to make changes to their manufacturing facility and quality systems in order to provide exclusively for OBI the manufacture and supply of FtBu, at purity levels 96% or higher, that is fully cGMP compliant, as that term is defined below.

THEREFORE, in consideration of the foregoing, of the mutual covenants and undertakings contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OBI and Company (each, and, collectively, the *'Parties"),* intending to be legally bound, hereby agree as follows:

1. **Definitions.** The following words and phrases when used herein with capital letters shall have the meanings set forth or referenced below:

   1.1. *"Act"* shall mean the current good manufacturing practices (cGMP) as set forth in the Federal Food, API and Cosmetic Act (21 U.S.C. 301), as amended.

   1.2. *"Active Pharmaceutical Ingredient"* or *"API" or "Product"* shall mean the active pharmaceutical ingredient of the Oxycyte compound, specifically FtBu, in bulk form that Company shall manufacture for OBI under a separate agreement.

   1.3. *"Affiliate"* shall mean any corporation or non-corporate business entity which controls, is controlled by, or is under common control with a party to this Agreement. A corporation or non-corporate business entity shall be regarded as in control of another corporation or non-corporate business entity if it owns, or directly or indirectly controls, in excess of fifty percent (50%) of the voting stock of the other corporation, or: (a) in the absence of the ownership in excess of fifty percent (50%) of the voting stock of the other corporation or in case a non-corporate business entity, if

it possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such corporation or business entity, as applicable.

1.4. *"Applicable Laws"* means all applicable, federal, state and local laws, ordinances, rules and regulations including, without limitation, the Act (as defined herein), cGMP, and the corresponding laws, ordinances, rules and regulations of any other applicable jurisdiction.

1.5. *"Certificate of Compliance"* means, for each Product batch, the form of Company's document: (a) listing the manufacturing date, the unique batch number, and the quantity of Product in such batch, and (b) certifying that such batch was manufactured in accordance with Applicable Laws, including, without limitation, cGMP. The Certificate of Compliance may be included within the Certificate of Analysis, or separately, if required by OBI for regulatory purposes or Applicable Law.

1.6. *"cGMP"* shall mean the current good manufacturing practices as set forth in 21C.F .R. Part 210 and Part 211, and Part 600 as applicable and the current International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use, Guidance for Industry Q7 A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients, as amended and revised.

1.7. *"Development Fees"* shall mean all monies due and payable to Company in respect for development activities and services rendered and further detailed in Exhibit 2, entitled Development Project, attached hereto and incorporated herein by reference.

1.8. *"Non-Portable Equipment"* means the Non-Portable Equipment as defined in Exhibit 2 hereof, excluding any Portable Equipment and all renovations made directly to the building structure. Components of the Non-Portable Equipment, such as valves, pumps, agitators and filter housings, shall also be deemed Non-Portable Equipment. Non-Portable Equipment also includes the related documentation regarding the design, validation, operation, calibration and maintenance of such equipment.

1.9. *"Portable Equipment"* means the Portable Equipment as defined in Exhibit 2 hereof , including, without limitation, the related documentation regarding the design, validation, operation, calibration, and maintenance of such equipment. Components of the Portable Equipment, such as valves, pumps, agitators and filter housings, shall also be deemed Portable Equipment.

1.10. *"Qualification"* means establishing documented evidence that a piece of equipment or a manufacturing process operates within predetermined parameters consistently and reproducibly, and that such piece of equipment or manufacturing process is capable of producing Product that consistently meets all applicable quality specifications. Qualification may refer to Installation Qualification (" IQ "), Operational Qualification ("OQ"), and Performance Qualification ("PQ") as those terms have been generally defined by the FDA and the pharmaceutical industry.

2. Performance. Company agrees to immediate procurement of all necessary equipment and materials to complete the construction project specified herein under Exhibit 2 prior to entering into subsequent arrangements to manufacture product for OBI. Company shall be responsible for all that is necessary or required to supply the Products, including without limitation all renovation, construction, supervision, administration, coordination, labor and other machinery, equipment, materials, supplies and other goods, licenses, permits, approvals and documents, all in accordance with this Agreement. In addition, Company agrees to begin

development of all required documentation, so as to ensure that production of FtBu will be fully cGMP compliant. Moreover, Company agrees to provide OBI with requested information and reasonable assistance in terms of drafting a new CMC section for regulatory purposes. Furthermore, Company agrees to allow for an independent audit of its facility, including equipment, system and process design, and quality systems and other documentation so as to ensure cGMP compliance.

3. **Terms & Conditions**: Company shall build and renovate the manufacturing facility pursuant to the terms and conditions of this Agreement, more specifically detailed in Exhibit 2. As an integral basis of the bargain hereof, Company agrees that

   3.1. it shall perform all of its obligations hereunder in accordance with any timelines provided herein and consistent with the Building Specifications as defined in Exhibit 2.

   3.2. after the development runs are completed, it shall not change the manufacturing site, or the materials, process or plant used in the manufacture of the Products following completion of the renovations without first obtaining the written consent of OBI to such change.

   3.3. it shall use all equipment installed under this Agreement exclusively for the production of Product for OBI unless it receives written permission from OBI to do so, such permission is at the sole discretion of OBI and any refusal to grant such permission shall be deemed reasonable.

4. **Term.** This Agreement shall commence as of the Effective Date and, unless earlier terminated earlier as provided below, shall expire upon completion of the Development Project in Exhibit 2.

5. **General Termination Rights.** Either party may terminate this Agreement as follows:

   5.1. In the event that the other party goes into liquidation, or seeks the benefit of any bankruptcy or insolvency act, or a receiver or trustee is appointed for its property or estate, or it makes an assignment for the benefit of creditors, whether any of the aforesaid events be the outcome of the voluntary act of such party or otherwise, and such procedures are not terminated within ninety (90) days; or

   5.2. By giving to the other party sixty (60) days' prior written notice upon the breach of material provision of this Agreement by the other party if the breach is not cured within sixty (60) days after written notice thereof to the party in default.

6. **Effect of Termination**

   6.1. **Accrued Payment Obligations.** Upon breach of a material provision of this Agreement by OBI that results in the termination of this Agreement, OBI shall reimburse Company of Company's cost of all supplies and equipment purchased and on hand or on order, to the extent such supplies or equipment cannot be reasonably used by Company for other purposes. Company shall invoice OBI for all amounts due hereunder. Payment shall be made pursuant to Section 7 below.

6.2. **Files and Records**. Upon breach of a material provision of this Agreement by Company that results in the termination of this Agreement, Company shall promptly make available to OBI copies of all Qualification documents and shall store the originals or electronic copies of such documents and records according to cGMPs in accordance with Company's internal quality procedures and all Applicable Laws.

6.3. **Equipment**. Upon breach of a material provision of this Agreement by Company that results in the termination of this Agreement, Company shall ship all Portable Equipment to OBI upon receiving written notice to do so, but only where OBI rendered payment to Company for all equipment to be returned. OBI shall pay all expenses for the removal and shipping of such equipment, but shall not be responsible for any renovations required to the facility following removal of the Portable Equipment.

7. **Payment Schedule.** Total consideration for all facility structural renovations, purchase and installation of equipment and design and implementation of all processes details in Exhibit 2 shall be two hundred sixty-one thousand dollars ($261,000).

7.1. Payments shall be made within thirty days of invoice, invoice to be submitted after the completion of the triggering deliverables, as follows:

Payment Number	Deliverable	Estimated time to Completion	Amount
1	i. Signature of Agreement	n/a	36,000
2	i. Roof raised 4 feet over production area ii. Walls erected and painted iii. Existing water pipes relocated iv. Electrical systems modified v. HVAC system installed vi. Master Batch Record (MBR) drafted vii. SOPs for all activities related to cGMP production of PtBu written and approved viii. Specifications for starting materials and in-process samples drafted	2 months from Effective Date	75,000
3	i. Finish applied to floor ii. Washable ceiling grid installed iii. Direct fluorination reactor received and installed iv. IQ/OQ/PQ protocols / documents approved v. One new distillation unit with controls installed vi. High temperature fluorination reactor with controls installed vii. Slurry adsorption units installed	4 months from Effective Date	75,000

Payment Number	Deliverable	Estimated time to Completion	Amount
4	i. New equipment and production area qualified ii. Necessary changes to existing quality system documents approved iii. Development run(s) finished iv. IQ/OQ/PQ reports written and approved v. MBR and Specifications for starting materials and in-process samples approved	6 months from Effective Date	75,000

7.2. In no event will OBI be responsible for charges arising out of or resulting from any (i) error, omission or mistake of Company or a supplier of Company.

8. **Force Majeure Event**. Subject to the provisions of this Section 8, if supervening events, including, but not limited to, acts of God, acts of the public enemy, terrorist acts, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of natural resources or of energy, or other similar causes that are unforeseeable, beyond the reasonable control of, and without the fault or negligence of the Party so affected (each, a "Force Majeure Event"), occur that render performance by such Party under this Agreement impossible, then such party is excused from whatever performance is rendered impossible by the Force Majeure Event ("Suspension of Performance"); provided that: (i) such Party informs the other Party immediately of such Force Majeure Event; (ii) such Party promptly informs the other party of the length of the expected delay; (iii) such Party takes all reasonable actions to avoid or overcome such Force Majeure Event, to mitigate damages hereunder, and to mitigate the length of any such Suspension of Performance; and (iv) such Party, to the extent it is able, continues to perform its obligations under this Agreement, unless otherwise directed by the other Party. A Party's performance of covenants (i) and (ii) herein are conditions precedent to its Suspension of Performance and covenants (iii) and (iv) herein are conditions precedent to its continued Suspension of Performance. Force Majeure Event does not include inability to perform due to the volume of business at Company, economic hardship, changes in market conditions, or insufficiency of funds.

9. **Assignment**. This Agreement may not be assigned by either Party to any other Party without the prior written consent of the other Party hereto; provided, however, that OBI may assign its rights and obligations hereunder, by written notice to Company, to a successor or transferee (whether by merger, consolidation, purchase or otherwise) of either all, or substantially all, of the assets of OBI. Any purported assignment in violation of this provision shall be void from the beginning.

10. **Severability**. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

11. **Entire Agreement.** This Agreement, without limitation, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties (whether written or oral) relating to the subject matter hereof.

12. **Waiver, Modification of Agreement and Remedies**. No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both Parties. Failure by either Party to enforce any such rights under this Agreement shall not be construed as a waiver of such rights, nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances. The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights and remedies provided by law.

13. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles, and the Parties hereby submit to the exclusive jurisdiction of the North Carolina courts, both state and federal.

14. **Notices.** Any notice required or permitted under this Agreement shall be given in writing (i) by (A) delivery in hand or by postage prepaid, United States first class mail with proof of mailing, or (B) registered or certified mail, return receipt requested, or (ii) by recognized national overnight courier service to the address specified below, or at such other address as each Party may specify in writing.

If to OBI:

Oxygen Biotherapeutics, Inc.
Attn: General Counsel
2530 Meridian Parkway
Durham, NC 27713
Fax: 919-806-4417

If to Company

FluoroMed, L.P.
Attn: Tom Bierschenk
2350 Double Creek Dr.
Round Rock, Texas 78664
Fax: 512-255-8298

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

OXYGEN BIOTHERAPEUTICS, INC.

By/Signature: _____

Name: Michael Jebsen

Title: Executive VP Finance & Admin.
Chief Financial Officer

FLUOROMED L.P.

By/Signature: _____

Name: Thomas R. Bierschenk

Title: Vice President

EXHIBIT 1
CONFIDENTIAL DISCLOSURE AGREEMENT

CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made and entered into on February 16, 2011 ("Effective Date"), by and between Oxygen Biotherapeutics, Inc., having a place of business at 2530 Meridian Parkway, Suite 3078, Durham, NC 27713 ("OBI"), and FluoroMed, L.P., having a place of business at 2350 Double Creek Dr., Round Rock, Texas 78664 ("FluoroMed") (each individually referred to herein as a "Party" and collectively referred to as the "Parties").

WHEREAS, the Parties may disclose Confidential Information (defined below) for the purpose of enabling the Parties to evaluate the desirability of negotiating a formal agreement with respect to the Confidential Information whether or not patentable ("Purpose"); and

WHEREAS, the Parties desire that their respective Confidential Information be maintained in strict secrecy and confidence.

NOW THEREFORE, in consideration of the forgoing, and of the mutual covenants, promises, and agreements contained herein, the Parties hereby agree as follows:

1 Confidential Information

Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media. The Party disclosing or submitting the Confidential Information is the Disclosing Party. The Party Receiving the Information is the Receiving Party. Nothing herein shall require either Party to disclose any information.

2 Receiving Party's Obligations

A. Receiving Party agrees that the Confidential Information is to be considered confidential and proprietary to Disclosing Party and Receiving Party shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Disclosing Party, and shall disclose it only to its officers, directors, or employees with a specific need to know. Receiving Party will not disclose, publish or otherwise reveal any of the Confidential Information received from Disclosing Party to any other party whatsoever except with the specific prior written authorization of Disclosing Party.

B. Confidential Information furnished in tangible form shall not be duplicated by Receiving Party except for purposes of this Agreement. Upon the request of Disclosing Party, Receiving Party shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request, except one copy which may be archived for the exclusive purposes of ensuring adherence to the obligations contained within this agreement

5 Term

The term of this Agreement shall commence as of the Effective Date and, unless extended by mutual agreement of the Parties, terminate on the date occurring three (3) years from the Effective Date. The obligations of Receiving Party herein shall be effective five (5) years from the date Disclosing Party last discloses any Confidential Information to Receiving Party pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Receiving Party, nor by the rejection of any agreement between Disclosing Party and Receiving Party, by a trustee of Receiving Party in bankruptcy, or by the Receiving Party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

6 Other Information

Receiving Party shall have no obligation under this Agreement with respect to Confidential Information which (i) is or becomes publicly available without breach of this Agreement by Receiving Party; (ii) is rightfully received by Receiving Party without obligations of confidentiality; (iii) is developed by Receiving Party independent of any Confidential Information of the other Party, such independent development being performed solely by persons having no access to the other Party's Confidential Information, as evidenced by contemporaneous written evidence of same; or (iv) is required to be disclosed by a court or judicial or governmental authority of competent jurisdiction, by any applicable law, rule or regulation, or by any applicable stock exchange or stock association rule, and in such event, only after the Receiving Party provides prompt written notice to Disclosing Party so as to enable that Party to resist.

7 No License

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Receiving Party agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

8 No Publicity

Receiving Party agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Disclosing Party.

7. Governing Law and Equitable Relief

A. This Agreement shall be governed and construed in accordance with the laws of the United States and the State of North Carolina and the Parties consent to the exclusive jurisdiction of the state courts and U.S. federal courts located there for any dispute arising out of this Agreement, without reference to choice or conflict of law rules otherwise applicable. The Parties hereby expressly waive any objection to such exclusive jurisdiction.

B. The Parties agree that in the event of any breach or threatened breach by Receiving Party, Disclosing Party may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Disclosing Party against any such breach or threatened breach.

8. Final Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

9. No Assignment

Receiving Party may not assign this Agreement or any interest herein without Disclosing Party's express prior written consent.

10. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

11. No Implied Waiver

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OXYGEN BIOTHERAPEUTICS, INC.	FLUOROMED L.P.
By/Signature:	By/Signature:
Name:	Name: Thomas R. Brzozowski
Title: Nancy J.M. Hecox VP Legal Affairs, General Counsel	Title: Vice President

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EXHIBIT 2
DEVELOPMENT PROJECT

The activities and efforts (the "Project") described within this Agreement specify the deliverables that are required to adequately fulfill the requirements of said Agreement. The following modifications to the physical plant and finalization of the overall Quality system must be completed before any Manufacturing of cGMP Product may begin. Where possible, work related to each of these activities must commence within 30 days of execution of the Agreement.

A) **Structural Renovations (required to meet cGMP production requirements ("Building Specifications"):** $45,000
   1) Walls erected and painted
   2) Electrical systems modified
   3) HVAC system installed
   4) Roof raised four (4) feet over production area
   5) Existing water pipes relocated
   6) Finish applied to floor
   7) Install washable ceiling grid

B) **Portable Equipment Purchased and Installed**:
   1) Direct Fluorination Unit with Solvent Recovery Distillation Unit: $55,000
   2) High Temperature Fluorination Reactor with Controls: $30,000
   3) Distillation Unit with Controls (capacity of approximately 60 kg/month): $45,000
   4) Slurry Absorption Unit: $7,000

C) **Qualification of new equipment and production area:** $17,000

D) **Document Preparation:** $62,000 (Excludes Validation Protocol and Validation Report)
   1) Prepare Batch Records for each step
   2) Prepare Standard Operating Procedures for each step
   3) Prepare Specifications for starting material and in-process material
   4) Prepare IQ, OQ and PQ Documents
   5) Write IQ, OQ and PQ Report
   6) Make necessary changes to existing Quality System Documents to reflect the addition of the new cGMP production area and product (i.e, update electrical SOP, HVAC SOP, Master Equipment List, Blue Prints, Personnel Flow Diagram, Materials Flow Diagram, the General Production Procedures, Room/Area use Records, Prepare SOP for Reprocessing and Reworking Product, etc.)

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement of Oxygen Biotherapeutics, Inc. on Form S-8 (No. 333-167175) and related prospectuses as well as the Registration Statement of Oxygen Biotherapeutics, Inc. on Form S-3 (No. 333-165733) of our audit report dated July 24, 2012, with respect to the financial statements of Oxygen Biotherapeutics, Inc., which report appears in the Annual Report on Form 10-K of Oxygen Biotherapeutics, Inc. for the years ended April 30, 2012 and 2011.

/s/ CHERRY, BEKAERT & HOLLAND, L.L.P.

Raleigh, North Carolina
July 24, 2012

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER

I, Michael B. Jebsen, certify that:

1. I have reviewed this Annual Report on Form 10-K of Oxygen Biotherapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 24, 2012

OXYGEN BIOTHERAPEUTICS, INC.

By: /s/ Michael B. Jebsen

Michael B. Jebsen
Chief Financial Officer and Interim Chief Executive Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Oxygen Biotherapeutics, Inc. (the "Company") on Form 10-K for the period ended April 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael B. Jebsen, Interim Chief Executive Officer, President and Chief Financial Officer (Principal Executive Officer and Principal Financial Officer) of the Company, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 24, 2012

/s/ Michael B. Jebsen

Michael B. Jebsen
Interim Chief Executive Officer, President and Chief Financial Officer
(Principal Executive Officer)
(Principal Financial Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing