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

**Form 8-K/A**  
**(Amendment No. 1)**

**Current Report**  
**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): December 4, 2023**

**AXOGEN, INC.**  
(Exact Name of Registrant as Specified in Charter)

**Minnesota**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**001-36046**  
(Commission File Number)

**41-1301878**  
(I.R.S. Employer Identification No.)

**13631 Progress Boulevard, Suite 400 Alachua, Florida**  
(Address of principal executive offices)

**32615**  
(Zip Code)

**(386) 462-6800**  
(Registrant's telephone number, including area code)

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

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

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

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

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common Stock, \$0.01 par value	AXGN	The Nasdaq Stock Market

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

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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## EXPLANATORY NOTE

On December 6, 2023, Axogen, Inc. (the “Company”) reported on a Current Report on Form 8-K (the “Original Report”) that Peter Mariani stepped down as Chief Financial Officer of the Company. This amendment to the Original Report is being filed to provide information regarding the Separation, Waiver and Release of Claims Agreement (the “Separation Agreement”) entered into between Mr. Mariani and the Company that was subsequently finalized. The information previously reported in the Original Report is incorporated herein by reference.

### Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Pursuant to the Separation Agreement, effective January 5, 2024, and consistent with the terms of the Amended and Restated Employment Agreement, dated November 1, 2020, by and between Axogen Corporation, a Delaware corporation and wholly owned subsidiary of the Company and Mr. Mariani (the “Employment Agreement”), Mr. Mariani’s severance benefits in connection with his departure include a severance amount equal to 12 months of his current base compensation and COBRA benefits for 12 months after he ceased to be an employee of the Company on December 22, 2023 (the “Separation Date”). Pursuant to the Separation Agreement, Mr. Mariani will also receive a lump sum payment of \$60,437.83, which represents the amount of bonuses or commissions paid to Mr. Mariani during the year prior to his termination. All equity awards previously granted to Mr. Mariani that were unvested as of the Separation Date were forfeited for no consideration.

Following the Separation Date, pursuant to the Separation Agreement, Mr. Mariani will provide consulting services to the Company for 12 months (the “Consulting Period”), to assist with the transition of his role and other matters, and will be paid \$25,000 per month for such consulting services. The Company may terminate the Consulting Period for cause.

The foregoing description of the Separation Agreement is a summary and is qualified in its entirety by the full text of the Separation Agreement, which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. See the Exhibit index below, which is incorporated herein by reference.

<b><u>Exhibit No.</u></b>	<b><u>Description of Exhibit</u></b>
10.1	<a href="#"><u>Separation, Waiver and Release of Claims Agreement, dated January 5, 2024, between the Company and Peter Mariani</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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## SIGNATURES

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

AXOGEN, INC.

Dated: January 5, 2024

By: /s/ Marc Began

Marc Began

Executive Vice President, General Counsel, and Chief Compliance Officer

*Execution Copy*

## **SEPARATION, WAIVER AND RELEASE OF CLAIMS AGREEMENT**

This Confidential Separation, Waiver and Release of Claims Agreement and Exhibits hereto ("Separation Agreement"), by and between Axogen Corporation ("Axogen" or the "Company"), and Peter J. Mariani, an individual ("Employee") (individually known as a "Party" and collectively known as the "Parties"), provides for the terms of the separation of Employee's employment with the Company and the release by Employee of all actual or potential claims arising out of his employment, including the termination of his employment with the Company.

**WHEREAS** the Employee's employment with the Company will end no later than December 22, 2023 (the "Separation Date") and the Company and the Employee are desirous of amicably ending the employment relationship and waive all claims that Employee has or claims to have against Axogen, including any and all issues and claims surrounding or involving Employee's employment at and separation from employment with Axogen.

**WHEREAS** the Company and Employee are Parties to the Amended and Restated Employment Agreement (the "Employment Agreement") dated November 1, 2020 attached as **Exhibit A**;

**WHEREAS**, Employee and the Company also entered into a Confidentiality, Intellectual Property, Non-Competition and Non-Solicitation Agreement dated November 1, 2020 (the "Restrictive Covenant Agreement") attached as **Exhibit B**;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Separation Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Employee, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and adopted as if fully set forth herein.

2. **Separation.** Employee's employment with the Company will end on the Separation Date unless otherwise agreed to by the Parties in writing. As of the Separation Date, Employee hereby resigns all board and officer positions Employee holds with the Company and its affiliates and agrees to execute any documentation necessary to effectuate such resignations.

a. **Separation Package.** The Company agrees to provide Employee, in accordance with and in full satisfaction of any post-termination compensation or benefits entitlements in the Employment Agreement, the "Separation Package" set forth in this Section 2(a):

i. **Lump Sum Payment.** A lump sum payment in the amount of Four Hundred Seventy-Two Thousand Nine Hundred Ninety-Nine and 54/100 Dollars (\$472,999.54), equivalent to twelve (12) month's of Employee's base pay.



- ii. **Bonus Equivalent Payment.** The Company will pay Employee an amount equal to 100 % of any bonuses or commissions paid to Employee during the year prior to Employee's termination of employment in the amount of Sixty-Thousand Four Hundred Thirty-Seven and 83/100 Dollars (\$60,437.83).
- iii. **COBRA Continuation.** Employee's participation in all Company-paid employee benefit plans will cease as of the Separation Date unless Employee elects to continue his group health insurance coverage pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"). Employee and his dependents covered under the Company's group health insurance plan will be provided with notice of COBRA rights and COBRA election forms. If Employee elects continuation coverage under COBRA, the Company shall pay the premiums for the Employee and the Employee's covered dependents for the first twelve (12) months of the COBRA continuation period or until such time as the Employee obtains new employment that provides reasonable and comparable health care coverage (including without limitation coverage of dependents), whichever period is shorter. Employee has the duty to immediately notify the Company, in writing, if Employee obtains new employment that provides reasonable and comparable health care coverage. If the Employee does not obtain new employment that provides reasonable and comparable healthcare coverage, after the initial twelve (12) month period, the Employee may elect to continue his COBRA coverage at his own expense.
- iv. **Consulting Arrangement.** The Company shall engage Employee as a consultant for the period commencing on the Separation Date and ending on the first anniversary of the Separation Date or such earlier date the Company terminates the consulting relationship for Cause (the "Consulting Period"). During the Consulting Period, (A) Employee shall be available to perform up to ten hours per week of consulting services as requested by the Company and (B) the Company will pay Employee a monthly fee of \$25,000 (the "Consulting Fee"), paid on the first (1<sup>st</sup>) business day of each month for that calendar month, reported on an IRS Form 1099-MISC, provided that the first (1<sup>st</sup>) month of the Consulting Fee will be paid as promptly as possible following the Effective Date. Employee shall be solely responsible for all federal, state, and local taxes with respect to the Consulting Fee. During the Consulting Period, Employee shall be an independent contractor of the Company and shall not be entitled, and hereby waives any right, to participate in any benefit plans, policies or programs of the Releasees. For the avoidance of doubt, Employee shall not be entitled to any equity awards or equity vesting during the Consulting Period. The Company may terminate the Consulting Period at any time for Cause. "Cause" means Employee's (1) breach of this Agreement or any other agreement between the Parties, (2) provision of services to or affiliation



with Neuraptive, Checkpoint, Integra, MiMedx, or Biocircuit, (3) commission of or plea of no contest to a felony or crime of morale turpitude, (4) engagement in any conduct reasonably likely to reflect poorly upon the Company or to result in reputational or economic harm to the Company, or (5) breach of any legal duty owed to the Company.

- v. **D&O Tail Coverage.** Employee shall receive coverage under the Company's director's and officer's insurance in accordance with the terms, conditions and limitations of such insurance policy in effect at the Company from time to time.
- vi. **Equity Awards.** Employee acknowledges and agrees that:
  - 1. As of the Separation Date, Employee has 298,319 options that are vested, which shall be exercisable until the earlier of (x) the expiration of the ninety-day period immediately following the last day of the Consulting Period or (y) the Expiration Date of the option (as defined in the applicable award agreement). The 298,319 vested options include the following specific grants:
    - a. 110,000 stock options with an exercise price of \$8.95 per share, granted to the Employee on December 29, 2016.
    - b. 45,000 stock options with an exercise price of \$27.00 per share, granted to the Employee on December 18, 2017.
    - c. 41,800 stock options with an exercise price of \$19.17 per share, granted to the Employee on December 27, 2018.
    - d. 37,625 stock options with an exercise price of \$8.61 per share, granted to the Employee on March 16, 2020.
    - e. 38,125 stock options with an exercise price of \$20.91 per share, granted to the Employee on March 16, 2021.
    - f. 25,769 stock options with an exercise price of \$10.25 per share, granted to the Employee on March 16, 2022.
  - 2. In accordance with the terms of the performance-based restricted stock unit agreement dated March 16, 2022 between the Company and Employee (the "PSU Award Agreement"), the portion of the performance stock units granted pursuant to the PSU Award Agreement that vest will be based on the calendar years during the performance period set forth therein that were completed prior to the Separation Date and the Company's actual achievement of the applicable performance goals, as provided in Exhibit A to the PSU Award Agreement. In accordance with the terms and conditions of the PSU Award Agreement and the Company's Amended and Restated 2019 Long Term Incentive Plan (the "Plan"), the Board of Directors will determine the number of vested performance stock units that are held by Employee and that are ultimately settled. Vested performance stock units shall be settled upon the



completion of the applicable performance period in accordance with the terms of the Plan and the PSU Award Agreement.

3. All Company equity awards, including all stock options, restricted stock units and performance stock units held by Employee that are unvested as of the Separation Date shall be forfeited for no consideration. As of the Separation Date, Employee holds no other vested Company equity awards other than those set forth in items 1 and 2 of this Section 2.a.vi above.

vii. **No Other Payments/Vested Benefits.** Employee acknowledges and agrees that, except for accrued salary, including accrued paid time off, owing through the Separation Date and the Separation Package and Consulting Fee, he is not entitled to any other salary, compensation, benefits, bonuses or perquisites from the Company.

viii. **Payment.** Other than the payments in Section 2.a.iv., the payments will be subject to usual and customary tax withholdings and deductions (i.e., federal, state, social security, and Medicare taxes). The Separation Package set forth in sections Section 2.a. i. and 2.a.ii. above shall be paid in lump sum on the first payroll date following the 60<sup>th</sup> date after the Separation Date, provided Employee does not revoke the Separation Agreement in accordance with Paragraph 10 below, provided, however, that if such time period spans two (2) calendar years, the payments will be paid entirely in the second calendar year.

b. **Return of Company Property.** Employee acknowledges that he will return all Company property by January 12, 2024, including, in good condition and without limitation, any company-issued equipment, any keys and security and credit cards, all products, product samples, computers, cellular phones and other electronic devices; and all customer and account files, price lists, product information, training manuals, advertising and promotional materials, handbooks and policies (in physical or electronic format) documents, papers, files, data, correspondence, memoranda, reports, manuals, notes, records, customer lists, marketing or sales goals or plans, furniture, and all electronic files. Employee additionally agrees to retain no copies, whether in hard copy or electronic format, of any Company documents, papers, either complete or partial, any files, data, correspondence (except related specifically to his employment), memoranda, reports, manuals, notes, records, customer lists, or marketing or sales goals or plans, confidential information, trade secrets or materials in the Employee's control or possession as defined in the Employment Agreement (Exhibit A) and Restrictive Covenant Agreement (Exhibit B). Employee will be required to execute a Certificate Of Return Of Property And Confidential Information once all company property as defined herein, has been returned. (Exhibit C). Employee will only be subject to the Company's insider trading policy during the Consulting Period to the extent Employee continues to receive confidential information from the Company during such period.

Employee agrees he has made no claims of sexual discrimination or harassment and therefore neither party believes the Tax Cuts and Jobs Act of 2017 Section 162(q) is applicable to



this release. Nevertheless, Employee agrees the Company has not made any representations to him regarding the legal tax consequences of any funds received pursuant to this Separation Agreement. Employee agrees to pay any federal or state taxes remaining due which may be required to be paid with respect to this amount and agrees to indemnify and hold the Company harmless for any tax liability whatsoever.

The benefits under this Separation Agreement are intended to fall within the separation pay exception to Internal Revenue Code Section 409A as described in Treasury Regulation Section 1.409A-1(b)(9). To the extent that benefits under this Separation Agreement are or become subject to Code Section 409A, the Separation Agreement shall be interpreted and construed to the fullest extent allowed under Code Section 409A and the applicable regulations and other guidance thereunder to satisfy the requirements of an exception from the application of Code Section 409A or, alternatively, to comply with such Code Section and the applicable regulations and other guidance thereunder, and to avoid any additional tax thereunder. To the extent compliance with the requirements of Treasury Regulation Section 1.409A-3(i)(2) (or any successor provision) is necessary to avoid the application of an additional tax under Code Section 409A to payments due to Employee upon or following his separation from service, then notwithstanding any other provision of this Separation Agreement, any such payments that are otherwise due within six (6) months following Employee's separation from service will be deferred without interest and paid to Employee in a lump sum immediately following that six (6) month period as set forth in the Employment Agreement attached as Exhibit A.

**3. Release of the Company.** In exchange for the promises described in Paragraph 2 a above, Employee, for himself, his heirs, relatives by blood and marriage, executors, beneficiaries, administrators, successors, assigns and trustees, hereby releases and discharges the Company, each of its affiliates, and the agents, representatives, directors, board members, employees, officers, successors, assigns and attorneys of either the Company or any of its affiliates (collectively, "Releasees"), and all persons acting by, through, under, or in concert with any of the Releasees, from any and all actions, causes of action, suits, debts, claims, liabilities and demands of any nature, at law or in equity, that he has ever had or now has, from the beginning of time to the Effective Date of this Separation Agreement, by reason of any matter, cause or thing, whether actual or potential, whether known or unknown, whether suspected or unsuspected, whether specifically mentioned in this Separation Agreement or not, that may exist or might be claimed to exist or that may in the future arise by reason of any association or relationship among the parties prior to the Effective Date. This discharge and release includes, without limitation, the following:

Claims arising out of or relating to Employee's employment relationship with the Company or the termination of that relationship and claims involving any actual, compensatory or punitive damages or continuing or future effects arising out of or resulting from any actions or practices that took place or arose before the Effective Date of this Separation Agreement;

Claims arising from any alleged violation by the Company or any other of the Releasees of any federal, state or local statutes, regulations, ordinances or common laws, including the Fair Labor Standards Act, the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), Title VII of the Civil Rights Act of 1964, as amended, Section 1981 of the Civil Rights Act of 1866, The Rehabilitation Act of 1973, The Family Medical Leave Act ("FMLA"), the Americans





with Disabilities Act, the Employee Retirement Income Security Act of 1974, as amended, The Health Insurance Portability and Accountability Act, The Occupational and Safety Health Act, The Equal Pay Act, The Uniformed Services Employment and Re-employment Act of 1994, Executive Orders 11246 and 11141, The Sarbanes-Oxley Corporate Reform Act of 2002, 15 U.S.C. 7201, et seq., any state law, including any claim or violation under the Florida Civil Rights Act of 1992, the Florida Private Whistleblower Act, the Florida Equal Pay Act, claims under Florida's Workers Compensation Anti-Retaliation Provision, Florida's Wage Rate Provision, Florida Minimum Wage, Annual Wage Adjustment, Florida's Attorney's Fees Provision for Successful Litigations in Suits for Unpaid Wages, including all amendments thereto; and claims for attorneys' fees, legal expenses or costs pursuant to any of these statutes or any other basis;

Claims arising out of or related to an express or implied employment contract or a covenant of good faith and fair dealing;

Tort claims, whether common law or statutory, federal or state; and

Claims for wages, bonuses, benefits, salary continuation, severance pay, perquisites, monetary or equitable relief, or attorneys' fees.

Without waiving any prospective rights under the FMLA, Employee admits that Employee has received from the Company all rights and benefits, if any, potentially due to Employee pursuant to the FMLA. Similarly, Employee expressly acknowledges that the Company has paid Employee in full for all wages due, and no outstanding claims or charges are pending under the FLSA or other laws. The parties intend to release all claims which can legally be released, but no more than that. By entering into this Separation Agreement, it is Employee's intent to waive and release all claims and potential claims against the Releasees, save and except a claim against the Company for unemployment benefits.

Except as otherwise provided in this Separation Agreement and exhibits hereto, Employee will not initiate any action against the Company or any of the Releasees to assert any such claims. If any claims are asserted by Employee or on his behalf by any third party, Employee hereby waives his right to damages of any kind in connection with the assertion of such claim or claims. Employee further will indemnify and hold the Company and the other Releasees harmless from and against any and all losses, costs, judgments, damages, or expenses, including attorneys' fees and expert fees, incurred by it or them in defense, should Employee or any third party on behalf of Employee assert any claim or cause of action that has been discharged and released by virtue of the release and discharge set forth above.

Notwithstanding the foregoing, the release and discharge set forth in this Paragraph 3 is not intended to and does not apply to any claims for breach of this Separation Agreement.

**4. Administrative Claims.** Nothing in this Separation Agreement shall be interpreted or applied in a manner that affects or limits Employee's otherwise lawful ability to bring an administrative charge with, to participate in an investigation conducted by, or to participate in a proceeding involving the U.S. Equal Employment Opportunity Commission, National Labor Relations Board or other comparable state or local administrative agency.



However, Employee specifically agrees that the consideration provided to him in this Separation Agreement represents full and complete satisfaction of any monetary relief or award that could be sought or awarded to him in any administrative action (including any proceedings before the U.S. Equal Employment Opportunity Commission or other comparable state or local agency) arising from events related to his employment with Company or the termination thereof. Notwithstanding the foregoing, nothing in this Separation Agreement shall restrict Employee's ability to receive any benefit, award, or remedy to which Employee is or becomes entitled to pursuant to Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other applicable whistleblower law that prohibits waiver of such right.

Additionally, nothing in this Separation Agreement shall be interpreted or applied in a manner that affects or limits Employee's ability to challenge this Separation Agreement's compliance with notice and time-period requirements of the ADEA.

**5. Medicare/Medicaid Treatment.** Employee affirms, covenants, and warrants that Employee has made no claim for illness or injury against, nor is Employee aware of any facts supporting any claim against, the Releasees under which the Releasees could be liable for medical expenses incurred by Employee before or after the execution of this Separation Agreement. Furthermore, Employee is aware of no medical expenses that Medicare has paid and for which the Releasees are or could be liable now or in the future. Employee agrees and affirms that, to the best of Employee's knowledge, no liens of any governmental entities, including those for Medicare conditional payments, exist.

**6. Other Complaints, Charges, etc.** Employee represents that he has not filed any complaints, claims, actions, or charges against the Company or Releasees with any state, federal, or local agency (excluding the Securities and Exchange Commission or FINRA) or court; that he knows of no facts which may lead to any complaints, claims, actions, or charges against the Company or Releasees in or through any state, federal, or local agency or court; and that he has not made the Company aware of any facts which may lead to any complaints, claims, actions, or charges against the Company or Releasees in or through any state, federal, or local agency or court.

**7. Cooperation.** Employee agrees that he will make himself available for consultation and assistance in investigating and resolving any issues arising out of Employee's employment with or employment termination from the Company. To the extent that any legal matters arise that are in any way related to Employee's employment with the Company and require Employee's involvement in order to be appropriately resolved, Employee agrees to cooperate fully with the Company, upon the Company's request, in the resolution of such matter. Should it become necessary for Employee to provide consultation or assistance in person, the Company will pay any reasonable costs associated with requiring him to travel to the Company or elsewhere for such consultation or assistance.

**8. Nondisclosure.** Employee will not disclose or cause to be disclosed in any way any information or documents relating to the operations of the Company or any of its affiliates, including, without limitation, any trade secrets, proprietary or confidential information as set forth more fully in the Restrictive Covenant Agreement, or the facts and circumstances giving rise to this Separation Agreement, except for the purpose of enforcing this Separation Agreement or as



may otherwise be required by law. Notwithstanding the above, nothing in this Separation Agreement is intended to prohibit good faith reporting of possible violations of applicable law or regulation to any government agency or entity, or in making disclosures where such disclosures are protected under applicable law or regulation.

**9. Non-admission of Liability.** Employee acknowledges and agrees that the Company's offer of this Separation Agreement and the payments outlined in Paragraph 2 are in no way an admission by the Company that it (or any of its Releasees) has any obligation or liability to Employee.

**10. Right To Consider Agreement/ADEA/OWBPA.** Employee acknowledges and agrees that:

- (a) Employee has carefully read the Separation Agreement;
- (b) Employee understands and voluntarily, of Employee's own free will, agrees to all of the terms set forth in the Separation Agreement, and knowingly and voluntarily intends to be legally bound by the same;
- (c) Employee is advised in this writing that Employee may consult with a legal counsel of Employee's choice regarding this Separation Agreement and its effects, and has had the opportunity to so consult;
- (d) Employee has a full twenty-one (21) days within which to consider this Separation Agreement before executing it and agrees that any changes to this Separation Agreement, whether material or immaterial, do not restart the running of the twenty-one (21) day period
- (e) If Employee signs this Separation Agreement prior to the expiration of the twenty-one (21) day period, Employee does so voluntarily and thereby waives the remainder of the twenty-one (21) day period;
- (f) Employee understands that by signing this Separation Agreement, Employee am giving up certain rights, including, but not limited to, any and all claims under the Age Discrimination in Employment Act of 1967;
- (g) Employee has not been forced or pressured in any way to sign this Separation Agreement;
- (h) Employee knowingly and voluntarily releases the Releasees from any and all claims Employee may have, known or unknown, in exchange for the monetary and other benefits Employee will obtain by signing this Separation Agreement, and Employee acknowledges that these benefits are in addition to any benefits that Employee would have otherwise received if Employee did not sign this Separation Agreement;
- (i) Employee understands that Employee may revoke this Separation



Agreement at any time within seven (7) days following the date Employee signed it (“Revocation Period”) by providing written notification to Marc Began, Executive Vice President and General Counsel 111 West Oak Ave, Suite 500 Tampa, FL 33602 and that the Separation Agreement shall not become effective or enforceable until the Revocation Period has expired. Employee understands and agrees that the Company will not be required to provide the consideration set forth in this Separation Agreement if this Separation Agreement is revoked; and

(j) Employee understands that any rights or claims that may arise after the date this Separation Agreement is executed are not waived.

The effective date of this Separation Agreement (the “Effective Date”) will be the eighth day after Employee signs it, provided he has not revoked his acceptance and further provided that it has not been revoked by the Company prior to him signing it. The Company will not be obligated to make any payment or take any action as required by this Separation Agreement until it becomes fully effective. Should Employee revoke his acceptance, this Separation Agreement will not be effective or enforceable in any respect and Employee will not receive the benefits provided for in Section 2(a) above. Should Employee not accept the terms of this Separation Agreement by signing and returning this Separation Agreement to the Company by the 22nd day after the presentation date, the offers of the Company set forth in this Separation Agreement will be revoked.

**11. Non-disparagement.** Employee shall not at any time make any voluntary statement of any kind, or make any untrue statement while under any compulsory legal process, that is calculated to, or that foreseeably will, damage the business or reputation of the Company, any of its affiliates, or any of their respective directors, officers or employees. Notwithstanding the above, nothing in this Separation Agreement is intended to prohibit good faith reporting of possible violations of applicable law or regulation to any government agency or entity, or in making disclosures where such disclosures are protected under applicable law or regulation. The Company will direct the Board of Directors and Company employees at the level of vice president or above not to disparage Employee as long as they are engaged or employed by the Company.

**12. Section 409A.** Notwithstanding any provision of this Separation Agreement to the contrary, this Separation Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations thereunder (“Section 409A”) or an exemption therefrom, and the terms of this Separation Agreement shall be constructed and interpreted accordingly; provided, however, that the Company, the Company’s affiliates, and their respective employees, officers, directors, agents and representatives (including, without limitation, legal counsel) shall not have any liability to Employee with respect to any taxes, penalties, interest or other costs or expenses Employee or any related party may incur with respect to or as a result of Section 409A or for damages for failing to comply with Section 409A. Notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, no payments will be due to Employee under this Separation Agreement which are payable upon Employee’s termination of employment until Employee would be considered to have incurred a “separation from service” from the Company within the meaning of Section 409A. To the extent required in order to avoid





accelerated taxation and/or tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Separation Agreement during the six-month period immediately following Employee's termination of employment shall instead be paid on the first business day after the date that is six months following Employee's termination of employment (or within thirty (30) days of Employee's death, if earlier). In addition, for purposes of this Separation Agreement, each amount to be paid or benefit to be provided to Employee pursuant to this Separation Agreement shall be construed as a separate identified payment for purposes of Section 409A. With respect to expenses eligible for reimbursement or in-kind benefits under the terms of this Separation Agreement, (i) the amount of such expenses eligible for reimbursement or in-kind benefits provided in any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits provided in another taxable year, (ii) any reimbursements or in-kind benefits shall be made no later than the end of the calendar year following the calendar year in which the related expenses were incurred, (iii) any reimbursement is for expenses incurred during Employee's lifetime (or during a shorter period of time specified in this Separation Agreement), and (iv) Employee's right to have the Company pay or provide such reimbursements or in-kind benefits may not be liquidated or exchanged for any other benefit except, in each case, to the extent that the right to reimbursement or in-kind benefits does not provide for a "deferral of compensation" within the meaning of Section 409A.

**13. Clawback Policy.** All payments and benefits provided by the Company to Employee pursuant to his employment with the Company, including payments and benefits provided pursuant to the Employment Agreement, the equity award agreements and as provided herein, will be subject to recoupment in accordance with any clawback policy of the Company adopted pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, Employee agrees that he shall promptly return to the Company all amounts received by him as part of the Severance Package in the event he breaches the Restrictive Covenant Agreement in any material respect (without limiting the Company's ability to obtain all other legal and equitable remedies for such breach).

**14. Entire Agreement.** This Separation Agreement and exhibits hereto contain all of the terms and conditions agreed upon by the parties with respect to the termination of Employee's employment and supersedes any prior agreements or understandings between them concerning the subject matter of this Separation Agreement, including, without limitation, any severance pay or salary continuation plan. However, nothing in this Separation Agreement in any way impacts or supersedes the obligations set forth in the Employment Agreement (attached hereto as **Exhibit A**) and to the Restrictive Covenant Agreement (attached hereto as **Exhibit B**) which shall remain in full force and effect. Any modifications to this Separation Agreement must be in writing and signed by both parties.

**15. Counterparts.** This Separation Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.



**16. Assignment and Successorship.** This Separation Agreement, and the rights and obligations of the Company hereunder, may be assigned by the Company and shall inure to the benefit of and shall be enforceable by any such assignee, as well as any of the Company's successors in interest or nominees. This Separation Agreement, and the rights and obligations Employee has hereunder, may not be assigned by Employee. The release in this Separation Agreement is binding on Employee's heirs, executors, administrators, successors, and assigns.

**17. Governing Law.** This Separation Agreement and exhibits hereto and all transactions contemplated by this Separation Agreement shall be governed by and enforced in accordance with the internal laws of the state of Florida, without regard to principles of conflicts of laws.

**18. Jurisdiction and Venue.** The Parties acknowledge that a substantial portion of negotiations anticipated performance and execution of this Separation Agreement and the attached exhibits occurred or shall occur in Hillsborough County, Florida, and the Parties irrevocably and unconditionally (a) agree that any suit, action or legal proceeding arising out of or relating to this Separation Agreement or exhibits hereto, shall be brought in the courts of record of the state of Florida in Hillsborough County or the US District Court for the Middle District of Florida, Tampa Division; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waive any objection which they may have to the venue of any such suit, action or proceeding in any of such courts.

**19. Severability.** The provisions of this Separation Agreement are severable and independent, and if any word, phrase, clause or sentence of it is found to be illegal or unenforceable for any reason, the balance of the Separation Agreement will remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the undersigned have executed this Separation Agreement as of the dates set forth below.

Date: 1/5/2024 \_\_\_\_\_

AXOGEN

DocuSigned by:

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

*Marc Began*

C933FF428C3A412...

Name: Marc Began \_\_\_\_\_

Title: EVP and General Counsel \_\_\_\_\_

Date: 1/5/2024 \_\_\_\_\_

DocuSigned by:

*Peter J. Mariani*

F627D759F6D84B3

Peter J. Mariani/Employee Signature



## **EXHIBIT A**

### **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**





## **Exhibit B**

### **Confidentiality, Intellectual Property, Non-Competition And Non-Solicitation Agreement**



## **EXHIBIT C**

### **CERTIFICATE OF RETURN OF PROPERTY AND CONFIDENTIAL INFORMATION**

The undersigned certifies, pursuant to the Separation Agreement with AxoGen Corporation ("AXOGEN") dated January \_\_\_\_ 2024, that he has returned to AXOGEN all property and Confidential Information (as defined in the Separation Agreement) belonging to AXOGEN or any of its affiliates and has not retained any copies thereof in any form.

EMPLOYEE:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Dated: \_\_\_\_\_



## **EXECUTIVE EMPLOYMENT AGREEMENT**

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (the "Agreement"), effective as of February 25, 2016, is made by and between AXOGEN CORPORATION, a Delaware corporation ("AXOGEN" or "Employer"), and Peter Mariani ("Employee"), whose resident address is 4220 Creekside Pass, Zionsville, IN 46077 (collectively, the "Parties").

### **RECITALS:**

A. WHEREAS, AXOGEN believes it is in its best interest to employ Employee, and Employee desires to be employed by AXOGEN; and

B. WHEREAS, AXOGEN and Employee desire to set forth the terms and conditions on which Employee shall be employed by and perform duties on behalf of AXOGEN.

NOW, THEREFORE, in consideration of the promises set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged by this Agreement, the Parties to this Agreement, intending to be legally bound, agree as follows:

1. Employment. AXOGEN hereby employs Employee, and Employee hereby accepts such employment, beginning March 1, 2016, all upon the terms and conditions set forth in this Agreement, including those set forth in the attached Schedules and Exhibits.

(a) Duties of Employee. The duties of Employee are set forth on Schedule 1 of this Agreement, which is attached hereto and incorporated herein by reference.

(b) Compensation and Benefits. The compensation and benefits to which Employee may be entitled pursuant to this Agreement are set forth on Schedule 2 of this Agreement, which is attached hereto and incorporated herein by reference.

2. Invention Assignment and Confidentiality Agreement. Contemporaneously with the execution and delivery of this Agreement, Employee shall enter into an Invention Assignment and Confidentiality Agreement attached hereto as Exhibit "A" to this Agreement (the "Invention and Confidentiality Agreement"), which shall be incorporated herein by reference.

3. Non-Competition Agreement. Contemporaneously with the execution and delivery of this Agreement, Employee shall enter into a Non-Solicitation and Non-Competition Agreement attached hereto as Exhibit "B" to this Agreement (the "NSNC Agreement") which shall be incorporated herein by reference.

4. Termination.

(a) At-will. Either AXOGEN or Employee may terminate this Agreement at any time during the course of Employee's employment and for any reason, upon giving written notice to the other party. Employer shall have no further liability or obligation to Employee other than to pay for services rendered through Employee's last date of employment. If Employee elects to terminate this Agreement and provides Employer with any notice period prior to the date of termination, Employer may elect to terminate this Agreement immediately thereon and incur no further obligation to Employee other than for wages worked through the date of termination of this Agreement. It is the intention of the Parties that at all times this shall be an at-will



employment relationship during the course of Employee's employment with Employer. Nothing contained in this Agreement shall be deemed or construed to create a contractual relationship between the Parties for a specific duration of time.

(b) Death. In the event of the death of the Employee, this Agreement shall terminate on the date of Employee's death, without any liability to or upon the Employer other than to pay for services rendered prior to the date of the Employee's death.

(c) Permanent Disability. For purposes of this Agreement, the term "Permanent Disability" shall mean a physical or mental incapacity of Employee, which renders Employee unable to perform Employee's duties pursuant to this Agreement, and which shall continue for ninety (90) consecutive days or one hundred and eighty (180) days during any twelve month period. If AXOGEN or Employee terminates Employee's employment by reason of Permanent Disability of Employee, this Agreement shall terminate immediately upon written notice by AXOGEN to Employee, or the date Employee gives notice to terminate employment to AXOGEN, without any liability to or upon the Employer other than to pay for services rendered through the termination date.

5. Change in Control.

(a) Definition. For the purposes of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

- (i) any "person" (as that term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act")), who holds less than twenty percent (20%) of the combined voting power of the securities of AXOGEN or its parent company AxoGen, Inc. ("INC."), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of AXOGEN or INC. representing fifty percent (50%) or more of the combined voting power of the securities of either AXOGEN or INC. then outstanding; or
- (ii) during any period of twenty-four (24) consecutive months, individuals, who, at the beginning of such period constitute all members of the Board of Directors of INC. (the "Board") and cease, for any reason, to constitute at least a majority of the Board, unless the election of each director who was not a director at the beginning of the period was either nominated for election by, or approved by a vote of, at least two-thirds of the directors then still in office who were directors at the beginning of the period; or
- (iii) AXOGEN or INC. consolidates or merges with another company, and AXOGEN or INC. is not the continuing or surviving corporation, provided, however, that any consolidation or merger whereby INC. continues as the majority holder of AXOGEN securities or a merger or consolidation of AXOGEN and INC. will not constitute a Change in Control; or
- (iv) shares of AXOGEN's or INC.'s common stock are converted into cash, securities, or other property, other than by a merger of AXOGEN or INC., pursuant to Section 5(a)(iii), in which the holders of AXOGEN's or INC.'s common stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation as immediately after the merger; or





(v) AXOGEN or INC. sells, leases, exchanges, or otherwise transfers all, or substantially all, of its assets (in one transaction or in a series of related transactions), provided, however, that any such transaction related to AXOGEN whereby INC. continues as the majority holder of AXOGEN securities or INC. is the sole other party to the transaction, will not constitute a Change in Control; or

(vi) the holders of AXOGEN's or INC.'s stock approve a plan or proposal for the liquidation or dissolution of AXOGEN or INC.

(b) Severance.

(i) Termination in Connection with a Change of Control. In the event of Employee's termination of employment by AXOGEN without Substantial Cause (as defined below) upon or within one hundred and eighty (180) days following a Change in Control or by Employee for Good Reason (as defined below), Employee will be entitled to a severance payment consisting of twelve (12) months of Employee's base salary, an amount equal to any bonuses paid to Employee during the twelve (12) month period prior to Employee's termination of employment. However, if such termination occurs prior to payment of a bonus for the year ended December 31, 2016, Employee will receive the prorated estimated bonus earned as of the date of the Employee's termination of employment. For purposes of this Agreement, "Substantial Cause" means: (A) the commission by Employee of any act of fraud, theft, or embezzlement; (B) any material breach by Employee of this Agreement, provided that AXOGEN shall have first delivered to Employee written notice of the alleged breach, specifying the exact nature of the breach in detail, and provided, further, that Employee shall have failed to cure or substantially mitigate such breach within ten (10) days after receiving such written notice; (C) commission or conviction of any felony, or of any misdemeanor involving moral turpitude, or entry of a plea of guilty or nolo contendere to any felony or misdemeanor; (D) material failure to adhere to AXOGEN's or INC.'s corporate codes, policies or procedures which have been adopted in good faith for a valid business purpose as in effect from time to time; or (E) failure to meet reasonable performance standards as determined by AXOGEN or INC. For purposes of this Agreement, "Good Reason" shall mean Employee's resignation from employment upon or within ninety (90) days following a Change of Control, if AXOGEN or INC. is not the surviving entity, provided that Substantial Cause for termination of Employee's employment does not exist at the time of such resignation and the resignation is the result of the occurrence of any one or more of the following:

a) the assignment to Employee of any duties inconsistent in any respect with his/her position (including status, offices, titles, and reporting requirements), authorities, duties, or other responsibilities as in effect immediately prior to the Change in Control of Employer or INC. or any other action of Employer or INC. which results in a diminishment in such position, authority, duties, or responsibilities, other than an insubstantial and inadvertent action which is remedied by Employer or INC. promptly after receipt of notice thereof given by Employee;



b) a reduction by AXOGEN in Employee's base salary as in effect on the date hereof and as the same shall be increased from time to time hereafter;

c) the failure by AXOGEN to (A) continue in effect any material compensation or benefit plan, program, policy or practice in which Employee was participating at the time of the Change in Control of Employer or INC. or (B) provide Employee with compensation and benefits at least equal (in terms of benefit levels and/or reward opportunities) to those provided for under each employee benefit plan, program, policy and practice as in effect immediately prior to the Change in Control of Employer or INC. (or as in effect following the Change in Control of Employer or INC., if greater.

(ii) Termination not in Connection with a Change of Control. In the event of Employee's termination of employment by AXOGEN without Substantial Cause prior to a Change of Control, Employee shall be entitled to a severance payment consisting of: (A) twelve (12) months of Employee's base salary; and (B) an amount equal to any bonuses paid to Employee during the twelve (12) month period prior to Employee's termination of employment. However, if such termination occurs prior to payment of a bonus for the year ended December 31, 2016, Employee will receive the prorated estimated bonus earned as of the date of the Employee's termination of employment. Notwithstanding anything to the contrary contained in this Section 5(b)(ii), no severance payment will be owed to Employee if Employee is terminated by AXOGEN for any reason (with or without cause) within six months of the first date of Employees employment with AXOGEN.

(c) Payment of Severance. As a condition of receiving any severance under this section 5, Employee and must sign (and not revoke) a separation, waiver and release agreement (to be prepared by Employer at the time of Employees termination) of all claims (known and unknown) against Employer and INC. arising out of or relating to his employment with Employer or termination thereof, excluding claims for severance under this section 5, as well as any other terms and conditions required by Employer. Payment of any severance for Employee will be made in a lump sum on the first payroll date following the 60th day following the date of Employee's termination of employment. Notwithstanding the foregoing, if the Employee is a "specified employee" on Employee's termination date, the postponement provisions of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), as described in Section 8(n) below, shall apply, if applicable.

So long as Employer or INC.is subject to federal COBRA and Employee timely elects continuation coverage under COBRA, Employer or INC.shall pay the premiums for the Employee and his covered dependent's COBRA (i) for the first twelve (12) months of the COBRA continuation period, or (ii) until such time as the Employee obtains new employment that provides reasonable and comparable health care coverage (including without limitation, coverage of dependents), whichever period is shorter. Employee has the duty to immediately notify the applicable entity, in writing, if the event in (ii) above occurs.



6. Surrender of Records and all Employer and INC. Property. Upon the termination of Employee's employment for any reason, whether by AXOGEN or Employee, Employee agrees to return to AXOGEN and INC., in good condition, (i) any and all equipment belonging to AXOGEN or INC. including, without limitation, computers, cell phones, and personal digital assistants, and (ii) any and all data, computer files, customer lists and contact information, documents and other materials in Employee's possession, or removed by Employee from AXOGEN's or INC.'s premises, whether now in Employee's possession or not, which materials were obtained in connection with Employee's employment with AXOGEN, including any and all copies (whether complete or partial) and extracts thereof, and (iii) any and all other company property or Confidential Information and materials as they are defined in Employee's Invention Assignment and Confidentiality Agreement, in the Employee's control or possession.

7. Miscellaneous Provisions.

(a). Amendments to this Agreement only in Writing. The provisions of this Agreement and the attached Schedules and Exhibits shall only be amended, supplemented, or waived by a written agreement executed by both a duly authorized officer of AXOGEN and Employee.

(b). Assignments. Employee shall not assign Employee's rights and/or obligations pursuant to this Agreement or the attached Schedules and Exhibits. AXOGEN may assign its rights and/or obligations pursuant to this Agreement and the attached Schedules and Exhibits at any time without prior notice to Employee. In the event of a Change of Control in which AXOGEN or INC. is not the surviving entity, any reference to AXOGEN or INC. shall be deemed to refer to the surviving entity.

(c). Binding Effect. All of the terms and provisions of this Agreement and the attached Schedules and Exhibits, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective administrators, executors, legal representatives, heirs, successors and permitted assigns.

(d). The Provisions of this Agreement are Severable. If any part of this Agreement, or any of the Schedules or Exhibits entered into pursuant to this Agreement, is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement and its Schedules and Exhibits shall not be so invalidated, and shall be given full force and effect so far as possible.

(e). Survival. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 1 through 7 shall survive and remain in effect beyond the execution and delivery of this Agreement in accordance with their respective terms of duration.

(f). Waivers. The failure or delay of AXOGEN at any time to require performance by Employee of any provision of this Agreement or the attached Schedules and Exhibits, even if known, shall not affect the right of AXOGEN to require performance of that provision or to exercise any right, power or remedy pursuant to this Agreement or the attached Schedules and Exhibits. Any waiver by AXOGEN of any breach of any provision of this Agreement or the attached Schedules and Exhibits shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy pursuant to this Agreement or the attached Schedules and Exhibits.



(g). Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (i) hand-delivered by messenger or courier service; (ii) sent by an overnight-mail service (e.g. FedEx or UPS); or (iii) mailed (airmail, if international) by registered or certified mail (postage prepaid), return receipt requested, and addressed to:

If to Employee:

Employee's most current address on file with AXOGEN.

If to AXOGEN:

AXOGEN Corporation  
13631 Progress Blvd., Ste. 400  
Alachua, FL 32615  
Attn: CEO

With a copy to:

AXOGEN Corporation  
13631 Progress Blvd., Ste. 400  
Alachua, FL 32615  
Attn: Human Resources

or to such other address as any party may designate by written notice complying with the terms of this section. Each such notice shall be deemed delivered (a) on the date delivered, if by personal delivery, or (b) on the date upon which the return receipt is signed, delivery is refused, or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

(h). Governing Law. This Agreement and the attached Schedules and Exhibits and all transactions contemplated by this Agreement or the attached Schedules and Exhibits shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of laws.

(i). Jurisdiction and Venue. The Parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement and the attached Schedules and Exhibits occurred, or shall occur, in Alachua County, Florida, and the Parties irrevocably and unconditionally (a) agree that any suit, action or legal proceeding arising out of, or relating to, this Agreement or the attached Schedules and Exhibits shall be brought in the courts of record of the State of Florida in Alachua County, or the United States District Court, Northern District of Florida, Gainesville Division; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; (c) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agree that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

(j). Remedies Available to Either Party Cumulative. No remedy conferred upon any party pursuant to this Agreement (or the attached Schedules and Exhibits) is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given pursuant to this Agreement (or the attached Schedules and Exhibits) now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy pursuant to this Agreement (or the attached Schedules and Exhibits) shall preclude any other or further exercise of such right, power or remedy.

(k). Entire Agreement. This Agreement and the attached Schedules and Exhibits represents the entire understanding and agreement between the Parties with respect to the





subject matter contained herein and supersedes all other negotiations, understandings and representations (if any) made by and between the Parties.

(l). Section and Paragraph Headings. Section and paragraph headings used throughout this Agreement and the attached Schedules and Exhibits are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or the attached Schedules and Exhibits.

(m). Preparation of Agreement. This Agreement shall not be construed more strongly against any party regardless of who is responsible for its preparation. The Parties acknowledge that each party contributed to its negotiations and is equally responsible for its preparation.

(n). Section 409A of the Code. Notwithstanding any provision of this Agreement to the contrary, this Agreement is intended to meet the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") to the extent applicable, the Parties intend to administer this Agreement in a manner that is consistent with those requirements or an exception thereto, and this Agreement shall be construed and interpreted in accordance with such intent. Any payments that are considered deferred compensation under Section 409A of the Code and that are paid to a "specified employee" (as defined in Section 409A of the Code) upon separation from service shall be subject to a six (6) month delay, if required by Section 409A of the Code. If required by Section 409A of the Code, any amounts otherwise payable during the six (6) month period that commences on and follows the Employee's termination date shall be paid in one lump sum amount on the first payroll date following the six (6) month period following the Employee date of termination (or within thirty (30) days of the Employee's death, if earlier). For purposes of Section 409A of the Code, all payments to be made upon a termination of employment under this Agreement may only be made upon a "separation from service" (within the meaning of such term under Section 409A of the Code). Each payment made under this Agreement shall be treated as a separate payment. In no event shall the Employee, directly or indirectly, designate the calendar year of a payment. All reimbursements under this Agreement shall be provided in a manner that complies with Section 409A of the Code, if applicable. If required by regulations or other guidance issued under Section 409A of the Code or a court of competent jurisdiction, the provisions regarding payments hereunder shall be amended to provide for such payments to be made at the time allowed under such regulations, guidance or authority that most closely achieves the intent of this Agreement.

(o) Liability Insurance. AXOGEN shall cover the Employee under directors and officers liability insurance both during the term of this Agreement and for the one year period following the termination of this Agreement, in the same amount and to the same extent as AXOGEN covers its officers and directors.

***[Signature Page Follows]***



EMPLOYEE AND AXOGEN have executed this Agreement as of the 25th day of February, 2016.

**AXOGEN CORPORATION**

  
Name: Karen Zaderej  
Title: CEO

**EMPLOYEE:**

  
Peter Mariani



**SCHEDULE AND EXHIBIT LIST**

- Schedule 1 - Duties of Employee
- Schedule 2 - Compensation and Benefits
- Exhibit A - Invention Assignment and Confidentiality Agreement
- Exhibit B - Non-Solicitation and Non-Competition Agreement



## **SCHEDULE 1 DUTIES OF EMPLOYEE**

The duties of Employee with AXOGEN CORPORATION ("AXOGEN" or "Employer") are as follows:

1. Employee's Title: AXOGEN hereby employs Employee as Chief Financial Officer, which title may change at AXOGEN's discretion. EMPLOYEE will also be appointed Chief Financial Officer and Treasurer of INC.

2. Employee's Duties: During employment with AXOGEN, Employee's duties will include, without limitation, the following:

(a) Description of Duties. Employee shall perform all duties in connection with Employee's position, or as otherwise designated by AXOGEN, including, without limitation, the following duties:

Provide both operational and programmatic support to AXOGEN and INC. Supervise the finance unit and act as chief financial spokesperson for AXOGEN and INC. Directly assist on all strategic and tactical matters as they relate to budget management, cost benefit analysis, forecasting needs, financial statements, investor relations, and the securing of new funding or restructuring of current financing facilities. As a member of the senior management team, be involved in strategic planning, evaluation, and professional development initiatives.

(b) Report to AXOGEN Designated Manager. Employee shall report to the CEO of AXOGEN.

(c) Compliance With Employee Policies and Procedures. Employee shall comply with all AXOGEN policies and procedures for employees as such policies and procedures may exist from time to time.

(d) No Other Business Activities.

(i) Employee shall devote Employee's entire professional time, energy and skill to the performance of Employee's duties pursuant to the Agreement, the service of AXOGEN, and promotion of AXOGEN's interests. The Parties agree that Employee may not during Employee's employment, except as permitted in writing by AXOGEN, be engaged in any other business activity, whether or not such activity is pursued for gain, profit, or other pecuniary advantage including, without limitation, management or management consulting activities.

(ii) Notwithstanding the preceding subsection, Employee may invest Employee's personal assets in businesses or real estate that are not in competition with AXOGEN where the form or manner of such investment will not require services on the part of Employee, and in which Employee's participation is solely that of a passive investor.

(e) Compliance with AXOGEN's Rules and Regulations. Employee agrees to abide by all rules and regulations established from time to time by AXOGEN.





## **SCHEDULE 2 COMPENSATION AND BENEFITS**

Subject to the terms and conditions of the Executive Employment Agreement (the "Agreement"), Employee may be entitled to receive from AXOGEN Corporation ("AXOGEN" or "Employer") the following compensation and benefits:

1. Base Salary.

(a) Amount. Employee's salary during employment with AXOGEN will be at the rate of \$320,000 (Three Hundred Twenty Thousand Dollars) annually, (the "Base Salary") effective upon execution and delivery of the Agreement and Employee's first day of employment with AXOGEN.

(b) Payment. The Base Salary shall be payable in accordance with the existing payroll practices of AXOGEN, which practices may be changed by AXOGEN from time to time at its sole discretion. The Base Salary shall be subject to all appropriate withholding taxes.

(c) Review of Base Salary. The Base Salary shall be reviewed by AXOGEN on an annual basis; however AXOGEN reserves the right to increase or decrease the Base Salary at any time during the employment relationship in its sole discretion.

(d) Additional Compensation. In addition to the Base Salary, Employee may also be eligible to receive stock options, benefits, paid vacations and holidays during Employee's Employment.

2. Business Expenses and Reimbursements. Employee shall be eligible for reimbursement by AXOGEN in accordance with AXOGEN's normal reimbursement practices for ordinary and necessary business expenses incurred by Employee in the performance of Employee's duties for AXOGEN, so long as Employee timely submits to AXOGEN accurate invoices and receipts of all expenses submitted for reimbursement pursuant to this section.

3. Benefits. Employee will be permitted to participate in such benefit plans of AXOGEN that may be in effect from time to time, to the extent Employee is eligible under the terms of those plans. Nothing herein shall be construed to require AXOGEN to institute or continue any particular plan or benefit. AXOGEN reserves the right to add, change, or eliminate any benefits at any time at its sole discretion.

4. Vacations and Holidays. Employee will be entitled to paid vacation and holidays in accordance with the vacation and holiday policies of AXOGEN in effect for its employees from time to time. Vacation must be taken by Employee at such time or times as approved by AXOGEN.

5. Bonus.

(a) Calculation. During the Employment Period, Employee may receive a bonus based on an AXOGEN bonus plan, as determined by AXOGEN in its sole discretion. Bonus for 2016 will be pro-rated based on Employee start date and his target rate set at 40% of salary subject to the conditions of such bonus as established by the AXOGEN Board of directors.



(b) **Payment.** The Bonus if paid shall be paid in accordance with, and subject to, the normal payroll policies of AXOGEN with respect to similar forms of compensation, including, without limitation, being subject to all appropriate withholding taxes.

(c) **Signing Bonus.** Upon the first payroll period AXOGEN will pay Employee a one time signing bonus of \$15,000.

6. **Compensation Review.** AXOGEN shall, from time to time, but no less frequently than annually, review Employee's compensation (including benefits) and may, in its sole discretion, increase, or decrease, or eliminate any or all of the benefits. Any such increase or decrease in the compensation package shall be valid only if in writing, executed by a duly authorized officer of AXOGEN, and such writing shall constitute an amendment to this Paragraph 6 (and to the Agreement and any applicable Schedules or Exhibits) solely as to the benefits, without waiver or modification of any other terms, conditions or provisions of the Agreement.

7. **No Other Compensation.** Employee agrees that the compensation and benefits set forth in the Agreement and this Schedule 2 are the sole and exclusive compensation and benefits to which Employee is entitled pursuant to the Agreement and this Schedule 2, and that Employee shall have no rights to receive any other compensation or benefits of any nature from AXOGEN.



**EXHIBIT A OF EMPLOYMENT AGREEMENT**  
**INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT**

THIS INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT (the "Invention and Confidentiality Agreement") is entered into as of the date first written below, by and between AXOGEN Corporation ("AXOGEN" or "Employer") and the undersigned AXOGEN employee, ("Employee") for and in consideration of Employee's continued employment by AXOGEN and the compensation that Employee shall receive during Employee's employment, the Parties agree as follows:

1. Employee's Covenants, Representations and Warranties. Both during and after the termination of Employee's employment by AXOGEN for any reason or for no reason:

A. Non-Disclosure. Employee shall not disclose to anyone outside AXOGEN any Confidential Information. "Confidential Information" shall include, without limitation,

(i) all information, which has not been made publicly available by AXOGEN or the third-party owner of such information, which was developed by AXOGEN, any of AXOGEN's employees or independent contractors, or was developed for AXOGEN, including but not limited to Developments (as defined below in Section 3), technical data, specifications, designs, programs, software, hardware, concepts, discoveries, copyrights, improvements, product plans, research and development, personnel information, contents of manuals, financial information, customer lists, leads, marketing programs, testing programs, and/or other written materials;

(ii) all documents marked as confidential and/or containing such information;  
and/or

(iii) all information AXOGEN has acquired or received from a third party in confidence.

B. Use of Confidential Information. Employee shall use Confidential Information only for AXOGEN's business purposes.

C. Confidential Information and Materials Furnished by AXOGEN. Employee agrees that the Confidential Information and any other materials furnished by AXOGEN to Employee, (i) are proprietary to AXOGEN and contain specialized and unique information not obtainable from ordinary sources, (ii) have been created by AXOGEN at considerable time and expense, and (iii) shall remain, at all times, the exclusive and sole property of AXOGEN.

D. Use of Third-Party Information. Employee shall not disclose to AXOGEN, use in AXOGEN's business, or cause AXOGEN to use any information or material which is confidential to any third party unless AXOGEN has a written agreement with the third party allowing AXOGEN to receive and use the confidential information or materials.

E. Use of Copyrights. Employee will not incorporate into Employee's work any material that is subject to the copyrights of any third party unless AXOGEN has the right to copy and incorporate such copyrighted material.

F. Trade Secrets. Employee acknowledges AXOGEN's legitimate business interest in protecting its trade secrets and customer lists and in preventing direct solicitation of its



customers and agrees that any unauthorized use of trade secrets shall be presumed to be an irreparable injury that may be specifically enjoined.

2. Return of Confidential Information and Materials. Employee shall, immediately upon AXOGEN's request, or the termination of Employee's employment, for any reason, whether by Employee or AXOGEN, return to AXOGEN all Confidential Information and other materials furnished to Employee, and any and all third-party property, and/or copies of the same, and all documentation, notebooks and notes, reports and any other materials whether electronic or print media containing or derived from the Confidential Information and other materials furnished to Employee by AXOGEN.

3. Assignment of Rights. Employee hereby grants, transfers and assigns and agrees to grant, transfer and assign to AXOGEN all of Employee's rights, title and interest, if any, in any and all Developments, including rights to translation and reproductions in all forms or formats and the copyrights, patent rights and moral rights to the same, if any, and agrees that AXOGEN may further perfect AXOGEN's United States and foreign rights in, and to any and all, Developments under patents and copyrights. "Developments" shall mean any idea, invention, process, design, concept, or useful article (whether the design is ornamental or otherwise), computer program, trademark, trade secret, documentation, literary work, audiovisual work and any other work of authorship, hereafter expressed, made or conceived solely or jointly by Employee during Employee's employment, whether or not subject to patent, copyright or other forms of protection that is:

A. related to the actual or anticipated business, research or development of AXOGEN; and/or

B. suggested by or resulting from any task assigned to Employee or work performed by Employee for or on behalf of AXOGEN.

4. Copyrights. Employee acknowledges that the copyrights in Developments created by Employee in the scope of Employee's employment belong to AXOGEN by operation of law, or may belong to a party engaged by AXOGEN by operation of law pursuant to a works-for-hire contract between AXOGEN and such contracted third party. To the extent the copyrights in such works may not be owned by AXOGEN or such contracted party by operation of law, Employee hereby assigns and agrees to assign to AXOGEN or such contracted party, as the case may be, all copyrights (if any) Employee may have in Developments.

5. Assistance in Obtaining Copyrights and Patents. At all times after the date of this Invention Assignment and Confidentiality Agreement, Employee agrees to assist AXOGEN in obtaining patents or copyrights on any Developments assigned to AXOGEN that AXOGEN, in its sole discretion, seeks to patent or copyright. Employee also agrees to sign all documents, and do all things necessary to obtain such patents or copyrights, to further assign them to AXOGEN, and to reasonably protect them and AXOGEN against infringement by other parties at AXOGEN expense with AXOGEN prior approval.

6. Appointment of Attorney-In-Fact. Employee irrevocably appoints any AXOGEN-selected designee to act, at all times hereafter, as Employee's agent and attorney-in-fact to perform all acts necessary to obtain patents and/or copyrights as required by this Invention Assignment and Confidentiality Agreement if Employee (i) refuses to perform those acts or (ii) is unavailable, within the meaning of the United States Patent and Copyright laws. It is expressly intended by Employee that the foregoing power of attorney is coupled with an interest.





7. Record Keeping. Employee shall keep complete, accurate, and authentic information and records of all Developments in the manner and form reasonably requested by AXOGEN. Such information and records, and all copies of the same, shall be the property of AXOGEN as to any Developments assigned AXOGEN. Employee agrees to promptly surrender such information and records at the request of AXOGEN as to any Developments.

8. Developments. In connection with any of the Developments assigned by this Invention Assignment and Confidentiality Agreement, Employee hereby agrees:

- A. to disclose them promptly to AXOGEN;
- B. at AXOGEN's request, to execute separate written assignments to AXOGEN;
- C. to provide AXOGEN with notice of any inadvertent disclosure of Confidential Information related to any Development; and
- D. to do all things reasonably necessary to enable AXOGEN to secure patents, register copyrights or obtain any other form of protection for Developments in the United States and in other countries. If Employee fails or is unable to do so, Employee hereby authorizes AXOGEN to act under power of attorney for Employee to do all things to secure such rights.

9. No Designation as Author. AXOGEN, its subsidiaries, licensees, successors or assigns, (direct or indirect) is not required to designate Employee as author of any Developments when such Developments are distributed publicly or otherwise. Employee waives and releases, to the extent permitted by law, all Employee's rights to such designation and any rights concerning future modifications of such Developments.

10. Assignability. Rights, assignments, and representations made or granted by Employee in this Invention Assignment and Confidentiality Agreement are assignable by AXOGEN without notice, and are for the benefit of AXOGEN's successors, assigns, and parties contracting with AXOGEN.

11. Trade Secrets. Employee acknowledges that Employee is aware that a theft of trade secrets of an employer by an employee in Florida, such as is prohibited by this Invention Assignment and Confidentiality Agreement, constitutes a criminal violation of Florida Statute 812.081, punishable as a third-degree felony under Florida Statute 775.082, conviction for which carries a term of imprisonment not exceeding five (5) years. Employee acknowledges AXOGEN will seek vigorous prosecution under Florida Statutes for any violation thereof arising out of a breach by Employee of any of the material terms of this Invention Assignment and Confidentiality Agreement.

12. Advice of Counsel. Employee acknowledges and agrees that Employee has read and understands the terms set forth in this Invention Assignment and Confidentiality Agreement and has been given a reasonable opportunity to consult with an attorney prior to execution of this Invention Assignment and Confidentiality Agreement and has either done so, or knowingly declined to do so.



13. Miscellaneous Provisions.

A. Further Assurances. The Parties hereby agree from time to time to execute and deliver such further and other transfers, assignments and documents and do all matters and things that may be convenient or necessary to more effectively and completely carry out the intentions of this Invention Assignment and Confidentiality Agreement.

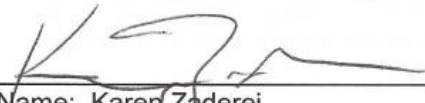
B. Survival. All covenants, agreements, representations and warranties made in this Invention Assignment and Confidentiality Agreement or otherwise made in writing by any party pursuant to this Invention Assignment and Confidentiality Agreement shall survive the execution and delivery of this Invention Assignment and Confidentiality Agreement and the termination of employment of Employee.

C. Injunctive Relief. Employee acknowledges that AXOGEN will be irreparably damaged (and damages at law would be an inadequate remedy) if this Invention Assignment and Confidentiality Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by Employee of any provision of this Invention Assignment and Confidentiality Agreement, AXOGEN shall be entitled, in addition to all other rights or remedies, to injunctions restraining such breach or threatened breach, without being required to show any actual damage or to post any bond or other security.

D. AxoGen, Inc. For purposes of this Agreement the defined term AXOGEN or Employer shall include AxoGen, Inc., AxoGen Corporation parent corporation.

THE PARTIES TO THIS AGREEMENT have executed this Invention Assignment and Confidentiality Agreement as of the 25th day of February, 2016.

**AXOGEN Corporation**

  
Name: Karen Zaderej  
Title: CEO

**EMPLOYEE**

  
Print Name: Peter Mariani



**EXHIBIT B TO EMPLOYMENT AGREEMENT**  
**NON-SOLICITATION AND NON-COMPETITION AGREEMENT**

THIS NON-SOLICITATION AND NON-COMPETITION AGREEMENT (the "NSNC Agreement") is entered into as of the date written below by and between AXOGEN Corporation ("AXOGEN" or "Employer") and the undersigned AXOGEN employee ("Employee").

**RECITALS:**

A. WHEREAS, Employee has agreed to accept employment with AXOGEN; and

B. WHEREAS, the Parties desire to reflect their agreement as to Employee's promises regarding Employee's solicitation and competition, which have induced AXOGEN to employ Employee.

NOW, THEREFORE, in consideration of Employee's employment with AXOGEN and the covenants set forth in this Agreement and other good and valuable consideration, the Parties, intending to be legally bound by this Agreement, agree as follows:

1. Non-solicitation. Employee shall not, at any time while employed by AXOGEN and for one (1) years after the termination of Employee's employment with AXOGEN for any reason whatsoever, or for no reason, directly or indirectly (by assisting or suggesting to another, or otherwise) solicit, otherwise attempt to induce or accept the initiative of another in such regard, alone or by combining or conspiring with any employees, officers, directors, agents, consultants, representatives, contractors, suppliers, distributors, customers or other business contacts of AXOGEN to terminate or modify its position as an employee, officer, director, agent, consultant, representative, contractor, supplier, distributor, customer or business contact with AXOGEN or to compete against AXOGEN.

2. Non-competition. Employee shall not, at any time while employed by AXOGEN and for one (1) years after such termination of Employee's employment for any reason whatsoever, or for no reason (the "No-Compete Period"), directly or indirectly, as owner, officer, director, employee, agent, lender, broker, investor, consultant or representative of any corporation or as owner of any interest in, or as an employee, agent, consultant, partner, independent contractor, affiliate or in any other capacity whatsoever, or representative of any other form of business association, sole proprietorship or partnership, conduct or assist in any way any business that competes directly with AxoGen's then-current or planned products or business.

3. Non-Interference. In addition to, and not in limitation of, the other provisions of this Agreement, or of any other agreement between Employee and AXOGEN, Employee shall not at any time, in any manner, interfere with, disturb, disrupt, decrease or otherwise jeopardize the business of AXOGEN, or give to any person the benefit or advantage of AXOGEN's or Corp.'s methods of operation, advertising, publicity, training, business customers or accounts, or any other information relating or useful to AXOGEN's or Corp.'s business.

4. Representations and Warranties. Employee does hereby represent and warrant to the Employer that:



(i) Employee is not presently employed by, and/or have any ownership interest, either directly or indirectly, in any entity or business, and is not presently engaged in any outside business activity in competition with AXOGEN;

(ii) this NSNC Agreement is executed by Employee to protect the legitimate business interests of the Employer;

(iii) legitimate business interests of the Employer to be protected by this NSNC Agreement include, without limitation, the protection of:

- a. valuable trade secrets of the Employer;
- b. the customer and vendor base of the Employer;
- c. confidential customer and vendor information belonging to the Employer;
- d. substantial business relationships between the Employer and its existing and prospective customers and vendors;
- e. goodwill associated with the specialized expertise of Employer; and
- f. specialized training undertaken by the Employer and its employees.

(iv) the other covenants and restrictions of this NSNC Agreement are appropriate and reasonable in all respects in light of the legitimate business interests of the Employer to be protected.

(v) the Employer and Employee have considered the public's health, safety and welfare, and that nothing contained in this NSNC Agreement will adversely affect the public's health, safety or welfare.

(vi) the execution and delivery of this NSNC Agreement, and the restrictions contained herein, the performance by Employee of the covenants and agreements contained herein, and the enforcement by the Employer of the provisions contained herein, will cause no undue hardship on Employee.

5. Other Restrictions. In consideration of Employer's agreement to employ, or to continue the employment of, Employee, and in accordance with the terms and conditions of this NSNC Agreement, the Employee hereby agrees as follows:

(i) The restrictions on employment contained above are essential elements of this NSNC Agreement, and that, but for the agreement of Employee to comply with such restrictions, the Employer would not have entered into the NSNC Agreement or the Agreement. The restrictions contained within this NSNC Agreement are reasonably necessary to protect the legitimate business interests of the Employer. The restrictions assist in assuring the continuity and growth of the Employer in the achievement of its goals and objectives. The legitimate business interests justifying the restrictions include, but are not limited to, trade secrets, valuable business information or professional information that otherwise do not qualify as trade secrets, substantial relationships with prospective and existing customers and vendors, or goodwill associated with the name of the Employer.





6. Remedies for Breach. Employee acknowledges and agrees that, in the event of a breach or threatened breach of any of the provisions of this NSNC Agreement, the Employer would suffer irreparable harm for which monetary damages would be inadequate. Accordingly, in addition to any other remedies available, at law or in equity, in the event of a breach or threatened breach by Employee of such provisions, the Employer will be entitled to equitable relief in the form of an injunction against such breach, both preliminary and permanent, without the requirement to post a bond or other security or to prove irreparable injury or inadequate remedy at law, specific performance or other appropriate relief.

7. Tolling. In the event that the Employer shall file a lawsuit in any court of competent jurisdiction alleging a breach of any of Employee's obligations under this NSNC Agreement, then any time period set forth in this NSNC Agreement, including the time periods set forth above, shall be deemed tolled as of the time such lawsuit is filed and shall remain tolled until such dispute finally is resolved either by written settlement agreement resolving all claims raised in such lawsuit or by entry of a final judgment in such lawsuit, including the final resolution of any post-judgment appellate proceedings.

8. Assignment. This NSNC Agreement and all rights and benefits hereunder are personal to Employee, and neither this NSNC Agreement, nor any right or interest herein of Employee shall be voluntarily or involuntarily sold, transferred or assigned by Employee; provided, however, that the Employer may assign its rights, duties and obligations hereunder without the prior written consent of Employee.

9. Severability. In the event any provision of this NSNC Agreement is held illegal or invalid, the remaining provisions of this NSNC Agreement and the Agreement shall not be affected thereby. If any of the restrictions contained in this NSNC Agreement or any part thereof is held to be unenforceable, the Parties agree that the court making such determination will have the power to reform the provisions of this NSNC Agreement to the extent permitted by applicable law.

10. No Defense to Enforcement. The existence of any claim or cause of action by Employee against AXOGEN predicated on the Agreement herein, shall not constitute a defense to the enforcement by AXOGEN of this NSNC Agreement.

THE PARTIES TO THIS AGREEMENT have executed this Agreement as of the 25<sup>th</sup> day of February, 2016.

**AXOGEN Corporation**

  
Name: Karen Zaderej

Title: CEO

**EMPLOYEE**

  
Print Name: Peter Mariam







**EXHIBIT A OF EMPLOYMENT AGREEMENT**  
**INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT**

THIS INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT (the "Invention and Confidentiality Agreement") is entered into as of the date first written below, by and between AXOGEN Corporation ("AXOGEN" or "Employer") and the undersigned AXOGEN employee, ("Employee") for and in consideration of Employee's continued employment by AXOGEN and the compensation that Employee shall receive during Employee's employment, the Parties agree as follows:

1. Employee's Covenants, Representations and Warranties. Both during and after the termination of Employee's employment by AXOGEN for any reason or for no reason:

A. Non-Disclosure. Employee shall not disclose to anyone outside AXOGEN any Confidential Information. "Confidential Information" shall include, without limitation,

(i) all information, which has not been made publicly available by AXOGEN or the third-party owner of such information, which was developed by AXOGEN, any of AXOGEN's employees or independent contractors, or was developed for AXOGEN, including but not limited to Developments (as defined below in Section 3), technical data, specifications, designs, programs, software, hardware, concepts, discoveries, copyrights, improvements, product plans, research and development, personnel information, contents of manuals, financial information, customer lists, leads, marketing programs, testing programs, and/or other written materials;

(ii) all documents marked as confidential and/or containing such information;  
and/or

(iii) all information AXOGEN has acquired or received from a third party in confidence.

B. Use of Confidential Information. Employee shall use Confidential Information only for AXOGEN's business purposes.

C. Confidential Information and Materials Furnished by AXOGEN. Employee agrees that the Confidential Information and any other materials furnished by AXOGEN to Employee, (i) are proprietary to AXOGEN and contain specialized and unique information not obtainable from ordinary sources, (ii) have been created by AXOGEN at considerable time and expense, and (iii) shall remain, at all times, the exclusive and sole property of AXOGEN.

D. Use of Third-Party Information. Employee shall not disclose to AXOGEN, use in AXOGEN's business, or cause AXOGEN to use any information or material which is confidential to any third party unless AXOGEN has a written agreement with the third party allowing AXOGEN to receive and use the confidential information or materials.

E. Use of Copyrights. Employee will not incorporate into Employee's work any material that is subject to the copyrights of any third party unless AXOGEN has the right to copy and incorporate such copyrighted material.

F. Trade Secrets. Employee acknowledges AXOGEN's legitimate business interest in protecting its trade secrets and customer lists and in preventing direct solicitation of its



customers and agrees that any unauthorized use of trade secrets shall be presumed to be an irreparable injury that may be specifically enjoined.

2. Return of Confidential Information and Materials. Employee shall, immediately upon AXOGEN's request, or the termination of Employee's employment, for any reason, whether by Employee or AXOGEN, return to AXOGEN all Confidential Information and other materials furnished to Employee, and any and all third-party property, and/or copies of the same, and all documentation, notebooks and notes, reports and any other materials whether electronic or print media containing or derived from the Confidential Information and other materials furnished to Employee by AXOGEN.

3. Assignment of Rights. Employee hereby grants, transfers and assigns and agrees to grant, transfer and assign to AXOGEN all of Employee's rights, title and interest, if any, in any and all Developments, including rights to translation and reproductions in all forms or formats and the copyrights, patent rights and moral rights to the same, if any, and agrees that AXOGEN may further perfect AXOGEN's United States and foreign rights in, and to any and all, Developments under patents and copyrights. "Developments" shall mean any idea, invention, process, design, concept, or useful article (whether the design is ornamental or otherwise), computer program, trademark, trade secret, documentation, literary work, audiovisual work and any other work of authorship, hereafter expressed, made or conceived solely or jointly by Employee during Employee's employment, whether or not subject to patent, copyright or other forms of protection that is:

A. related to the actual or anticipated business, research or development of AXOGEN; and/or

B. suggested by or resulting from any task assigned to Employee or work performed by Employee for or on behalf of AXOGEN.

4. Copyrights. Employee acknowledges that the copyrights in Developments created by Employee in the scope of Employee's employment belong to AXOGEN by operation of law, or may belong to a party engaged by AXOGEN by operation of law pursuant to a works-for-hire contract between AXOGEN and such contracted third party. To the extent the copyrights in such works may not be owned by AXOGEN or such contracted party by operation of law, Employee hereby assigns and agrees to assign to AXOGEN or such contracted party, as the case may be, all copyrights (if any) Employee may have in Developments.

5. Assistance in Obtaining Copyrights and Patents. At all times after the date of this Invention Assignment and Confidentiality Agreement, Employee agrees to assist AXOGEN in obtaining patents or copyrights on any Developments assigned to AXOGEN that AXOGEN, in its sole discretion, seeks to patent or copyright. Employee also agrees to sign all documents, and do all things necessary to obtain such patents or copyrights, to further assign them to AXOGEN, and to reasonably protect them and AXOGEN against infringement by other parties at AXOGEN expense with AXOGEN prior approval.

6. Appointment of Attorney-In-Fact. Employee irrevocably appoints any AXOGEN-selected designee to act, at all times hereafter, as Employee's agent and attorney-in-fact to perform all acts necessary to obtain patents and/or copyrights as required by this Invention Assignment and Confidentiality Agreement if Employee (i) refuses to perform those acts or (ii) is unavailable, within the meaning of the United States Patent and Copyright laws. It is expressly intended by Employee that the foregoing power of attorney is coupled with an interest.





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8. Developments. In connection with any of the Developments assigned by this Invention Assignment and Confidentiality Agreement, Employee hereby agrees:
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  - B. at AXOGEN's request, to execute separate written assignments to AXOGEN;
  - C. to provide AXOGEN with notice of any inadvertent disclosure of Confidential Information related to any Development; and
  - D. to do all things reasonably necessary to enable AXOGEN to secure patents, register copyrights or obtain any other form of protection for Developments in the United States and in other countries. If Employee fails or is unable to do so, Employee hereby authorizes AXOGEN to act under power of attorney for Employee to do all things to secure such rights.
9. No Designation as Author. AXOGEN, its subsidiaries, licensees, successors or assigns, (direct or indirect) is not required to designate Employee as author of any Developments when such Developments are distributed publicly or otherwise. Employee waives and releases, to the extent permitted by law, all Employee's rights to such designation and any rights concerning future modifications of such Developments.
10. Assignability. Rights, assignments, and representations made or granted by Employee in this Invention Assignment and Confidentiality Agreement are assignable by AXOGEN without notice, and are for the benefit of AXOGEN's successors, assigns, and parties contracting with AXOGEN.
11. Trade Secrets. Employee acknowledges that Employee is aware that a theft of trade secrets of an employer by an employee in Florida, such as is prohibited by this Invention Assignment and Confidentiality Agreement, constitutes a criminal violation of Florida Statute 812.081, punishable as a third-degree felony under Florida Statute 775.082, conviction for which carries a term of imprisonment not exceeding five (5) years. Employee acknowledges AXOGEN will seek vigorous prosecution under Florida Statutes for any violation thereof arising out of a breach by Employee of any of the material terms of this Invention Assignment and Confidentiality Agreement.
12. Advice of Counsel. Employee acknowledges and agrees that Employee has read and understands the terms set forth in this Invention Assignment and Confidentiality Agreement and has been given a reasonable opportunity to consult with an attorney prior to execution of this Invention Assignment and Confidentiality Agreement and has either done so, or knowingly declined to do so.



13. Miscellaneous Provisions.

A. Further Assurances. The Parties hereby agree from time to time to execute and deliver such further and other transfers, assignments and documents and do all matters and things that may be convenient or necessary to more effectively and completely carry out the intentions of this Invention Assignment and Confidentiality Agreement.

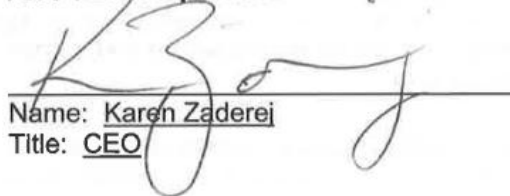
B. Survival. All covenants, agreements, representations and warranties made in this Invention Assignment and Confidentiality Agreement or otherwise made in writing by any party pursuant to this Invention Assignment and Confidentiality Agreement shall survive the execution and delivery of this Invention Assignment and Confidentiality Agreement and the termination of employment of Employee.

C. Injunctive Relief. Employee acknowledges that AXOGEN will be irreparably damaged (and damages at law would be an inadequate remedy) if this Invention Assignment and Confidentiality Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by Employee of any provision of this Invention Assignment and Confidentiality Agreement, AXOGEN shall be entitled, in addition to all other rights or remedies, to injunctions restraining such breach or threatened breach, without being required to show any actual damage or to post any bond or other security.

D. AxoGen, Inc. For purposes of this Agreement the defined term AXOGEN or Employer shall include AxoGen, Inc., AxoGen Corporation parent corporation.

THE PARTIES TO THIS AGREEMENT have executed this Invention Assignment and Confidentiality Agreement as of the 25th day of February, 2016.

**AXOGEN Corporation**



Name: Karen Zaderej  
Title: CEO

**EMPLOYEE**



Print Name: Peter Mariani



## Certificate Of Completion

Envelope Id: 315DF7BAE9B2411DB8387B7655B96112

Status: Completed

Subject: Complete with DocuSign: Separation Agreement (P. Mariani).pdf, Pete Mariani Executive Employmen...

Source Envelope:

Document Pages: 39

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Patti Havens

AutoNav: Enabled

13631 Progress Blvd Suite 400

EnvelopeId Stamping: Enabled

Alachua, FL 32615

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

phavens@axogeninc.com

IP Address: 70.127.228.127

## Record Tracking

Status: Original

Holder: Patti Havens

Location: DocuSign

1/5/2024 1:49:08 PM

phavens@axogeninc.com

## Signer Events

## Signature

## Timestamp

Pete Mariani

pete.mariani@gmail.com

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Signed: 1/5/2024 1:59:57 PM

Signature Adoption: Drawn on Device

Using IP Address: 174.141.148.52

Electronic Record and Signature Disclosure:

Accepted: 1/5/2024 1:57:28 PM

ID: 8283a33f-fd86-44ce-9323-2c997bb762da

Marc Began

mbegan@axogeninc.com

EVP and General Counsel

Security Level: Email, Account Authentication  
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Signature Adoption: Pre-selected Style

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Electronic Record and Signature Disclosure:

Accepted: 1/5/2024 2:00:50 PM

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## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

## Status

## Timestamp

## Intermediary Delivery Events

## Status

## Timestamp

## Certified Delivery Events

## Status

## Timestamp

## Carbon Copy Events

## Status

## Timestamp

Bernadette Cruz

bcruz@axogeninc.com

Human Resources Business Partner

Axogen

Security Level: Email, Account Authentication  
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	1/5/2024 2:02:14 PM
Completed	Security Checked	1/5/2024 2:02:16 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		





## ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Axogen, Inc (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### All notices and disclosures will be sent to you electronically

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### How to contact Axogen, Inc:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [kbrady@axogeninc.com](mailto:kbrady@axogeninc.com)

#### To advise Axogen, Inc of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [kbrady@axogeninc.com](mailto:kbrady@axogeninc.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### To request paper copies from Axogen, Inc

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [kbrady@axogeninc.com](mailto:kbrady@axogeninc.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### To withdraw your consent with Axogen, Inc

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:



- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [kbrady@axogeninc.com](mailto:kbrady@axogeninc.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

#### Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

#### Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
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