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

# FORM 8-K

## CURRENT REPORT

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

**Date of Report (Date of earliest event reported): September 30, 2011**

# AXOGEN, INC.

**(Exact name of registrant as specified in its charter)**

| **Minnesota** | **0-16159** | **41-1301878** |
|---|---|---|
| **(State or other jurisdiction of incorporation)** | **(Commission File Number** | **(IRS Employer Identification No.)** |

| **13859 Progress Boulevard, Suite 100, Alachua, Florida** | **32615** |
|---|---|
| **(Address of Principal Executive Offices)** | **(Zip Cope)** |

**Registrant's telephone number, including area code**

**(888) 296-4361**

**(Former name or former address if changed since last report,)**

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01. Entry into Material Definitive Agreement**

***Background***

On September 30, 2011, LecTec Corporation ("LecTec") completed its business combination with AxoGen Corporation ("AC") in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec, Nerve Merger Sub Corp., a subsidiary of LecTec ("Merger Sub"), and AC, which the parties amended on June 30, 2011 and August 9, 2011 (as amended, the "Merger Agreement"). Pursuant to the Merger Agreement, Merger Sub merged with and into AC, with AC continuing after the merger as the surviving corporation and a wholly owned subsidiary of LecTec (the "Merger"). Immediately following the Merger, LecTec changed its name to AxoGen, Inc. ("AxoGen"). Unless the context otherwise requires, all references herein to "AxoGen" refer to AxoGen and its wholly owned subsidiary following the completion of the Merger and the name change, all references to "LecTec" refer to LecTec prior to the completion of the Merger and the name change, and all references to "AC" refer to AC prior to the completion of the Merger.

In connection with the Merger,

- all outstanding AC convertible securities were converted into shares of AC common stock and exchanged for shares of AxoGen common stock;
- all outstanding AC warrants expired unexercised;
- all outstanding shares of AC common stock, including those issued upon conversion of AC convertible securities, were exchanged for shares of AxoGen common stock at a ratio of one share of AC common stock for 0.03727336 share of AxoGen common stock;
- all outstanding options to purchase shares of AC common stock were exchanged for options to purchase shares of AxoGen common stock at a ratio of one option to purchase shares of AC common stock for an option to purchase 0.03727336 of a share of AxoGen common stock.

A total of 6,211,759 shares of AxoGen common stock were issued in share exchange, and an additional 567,586 shares of AxoGen common stock were reserved for issuance upon exercise of AC stock options which were converted into AxoGen stock options. Upon completion of the Merger, all AC securities were cancelled.

Immediately following the completion of the Merger, former AC stockholders owned approximately 56.8% of the outstanding common stock of AxoGen, LecTec stockholders owned approximately 39.4% of the outstanding common stock of AxoGen, and certain investors owned the remaining 3.8% of the outstanding common stock of AxoGen.

As of September 30, 2011, immediately following the completion of the Merger, there were 10,940,494 shares of AxoGen common stock issued and outstanding. AxoGen has filed a request with the Financial Industry Regulatory Authority to change AxoGen's stock symbol from "LECT" to "AXGN," and expects to begin trading its common stock on the Over the Counter Bulletin Board under the symbol "AXGN" in early October 2011.

The full text of the Merger Agreement, including the amendments, as well as AxoGen press release dated September 30, 2011 announcing the completion of the Merger, are attached hereto as Exhibits 2.1, 2.2, 2.3 and 99.1 to this Current Report on Form 8-K and are incorporated by reference herein.

The issuance of the shares of AxoGen common stock to the former stockholders of AC was registered with the Securities and Exchange Commission on a Registration Statement on Form S-4 (Reg. No. 333-175379) (the "Registration Statement").

***Material AC Agreements***

Following the completion of the Merger, the following material AC agreements and arrangements became material agreements and arrangements of AxoGen. The description of material agreements is qualified in its entirety by reference to the underlying agreements, which are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4.1, 10.4.2, 10.5 and 10.6, and are incorporated by reference herein.

*UT Patent License Agreement*

On August 3, 2005, AC entered into a Patent License Agreement (the "UT Patent License Agreement") with the Board of Regents (the "Board") of the University of Texas System. Under this agreement, the Board has granted AC a royalty-bearing, exclusive license under certain patents and patent application relating to tissue engineering, to make, sell and import licensed products in the field of nerve regeneration and repair worldwide.

Additional information regarding the UT Patent License Agreement is included in the Registration Statement, under the caption entitled "Certain Information Concerning AxoGen — Intellectual Property — License Agreements." Such information is incorporated by reference herein.

*UFRF License Agreement*

On February 21, 2006, AC entered into a License Agreement (the "UFRF License Agreement") with the University of Florida Research Foundation, Inc. ("UFRF"). Under this agreement, UFRF has granted AC:

- an exclusive license under several patents applications relating to nerve repair, nerve grafting, selection of nerve grafts and in vitro nerve tissue culture, to make, sell and import licensed products in the field of medical devices, human therapeutics and human and animal tissue worldwide; and
- a non-exclusive license under certain licensed know-how to make, sell and import licensed products and/or licensed processes in the field of medical devices, human therapeutics and human and animal tissue worldwide.

Additional information regarding the UFRF Patent License is included in the Registration Statement, under the caption entitled "Certain Information Concerning AxoGen — Intellectual Property — License Agreements." Such information is incorporated by reference herein.

*BDI Incubator License Agreement*

On September 26, 2006, AC entered into a Sid Martin Biotechnology Development Institute ("BDI") Incubator License Agreement with UFRF. Under this agreement, UFRF admitted AC into its BDI Incubator Program and has agreed to provide AC with office and laboratory space and other facilities and resources to support the development of AC as an early-stage life science company.

*Nerve Tissue Processing Agreement*

Under an Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, by and between AC and LifeNet Health, and subsequently amended on August 9, 2011, LifeNet Health has agreed to process the peripheral nerve tissue and package the Avance® Nerve Graft product. This agreement has a term of two years and renews annually for one-year term unless either party terminates with six-month advanced written notice during a term. The parties are in discussions to renew, modify and extend the agreement. Under this agreement, AC is required to pay tissue processing service fees for each production run, and has agreed to minimum annual service commitments.

*Distribution Agreement*

On August 27, 2008, AC entered into a Distribution Agreement with Cook Biotech Incorporated ("Cook Biotech"). Under this agreement, Cook Biotech has appointed AC as its exclusive independent distributor to distribute its product worldwide for use in the peripheral nervous system and the central nervous system, with certain exclusions with respect to certain dental applications. The product refers to certain extra cellular matrix technology owned or controlled by Cook Biotech. The agreement has a seven-year term. Pursuant to the agreement, AxoGen provides purchase orders of the AxoGuard® products to Cook Biotech, and Cook Biotech fulfills the purchase orders. The agreement sets forth certain minimum purchase requirements and establishes a formula for the transfer cost of the AxoGuard® products.

*Loan and Security Agreement*

On September 30, 2011, AxoGen, as borrower, entered into the Loan and Security Agreement with MidCap Financial SBIC, LP ("MidCap"), as administrative agent, and the Lenders listed on Schedule 1 thereto. The credit facility under this agreement has a principal amount of $5.0 million and a term of 42 months, and is subject to prepayment penalties. Under this agreement, AxoGen is required to make interest only payments for the first 12 months, and payments of both interest and straight line amortization of principal for the remaining 30 months. The interest rate is 9.9% per annum, and interest is computed on the basis of a 360-day year and the actual number of days elapsed during which such interest accrues.

The agreement contains customary affirmative and negative covenants, including, without limitation, (i) covenants requiring AxoGen to comply with applicable laws, provide to MidCap copies of AxoGen's financial statements, maintain appropriate levels of insurance, protect, defend and maintain the validity and enforceability of AxoGen's material intellectual property, and (ii) covenants restricting AxoGen's ability to dispose all or any part of its assets (subject to certain exceptions), engage in other lines of business, changes its senior management, enter into merger or consolidation transactions, incur or assume additional indebtedness, or incur liens on its assets.

The credit facility is secured by all of AxoGen's assets. The lenders also receive a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at $2.23 per share.

**Item 2.01. Completion of Acquisition or Disposition of Assets**

The information set forth in Item 1.01 under the caption entitled "Background" of this Current Report on Form 8-K is incorporated herein by reference. The full text of the Merger Agreement, including the amendments, as well as AxoGen press release dated September 30, 2011 announcing the completion of the Merger, are attached hereto as Exhibits 2.1, 2.2, 2.3 and 99.1 to this Current Report on Form 8-K and are incorporated by reference herein.

**Item 2.03. Creation of Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The information set forth in Item 1.01 above, under the title "Material AC Agreements — Loan and Security Agreement" is incorporated by reference herein.

**Item 3.03. Material Modification to Rights of Security Holders**

***Amendment and Restatement of Articles of Incorporation; Amendment and Restatement of Bylaws***

On September 27, 2011, at the LecTec 2011 Annual Meeting of Shareholders, LecTec shareholders approved, among other proposals, the following:

- the amendment and restatement of LecTec's Articles of Incorporation to, among other things, increase the number of authorized shares of LecTec's capital stock from 15,000,000 to 50,000,000 and change LecTec's name to AxoGen, Inc.; and
- the amendment and restatement of LecTec's bylaws to (i) establish the timing and procedures for advance notice of director nominations and other business to be brought before regular meetings of the shareholders; (ii) establish the form and process for determining non-employee director compensation and expense reimbursement; (iii) expand the list of officers to include: chairman of the board, president, one or more vice presidents, treasurer, secretary and such other officers as the board may elect, and establish the duties for such positions and the process for determining officer compensation; (iv) authorize the board of directors to issue the shares authorized by the Articles of Incorporation and to establish the fair market value of any non-cash consideration received for such shares; (v) authorize the board of directors to declare dividends and establish the process for such action; (vi) require the board of directors to maintain a share register and other corporate books and records; (vii) permit the corporation to enter into certain loans, guarantees and suretyship arrangements, subject to board approval and certain other conditions and (viii) authorize the president to act on behalf of the corporation with respect to securities of other corporations held by the corporation, including voting, purchasing, selling, transferring or encumbering such securities, unless otherwise ordered by the board of directors. In addition, the amended and restated bylaws revise certain provisions in the previous bylaws to limit the board's ability to remove a director by a majority vote of the board to situations where a director is convicted of a felony or the directors have determined that a director is engaged in an activity that is competitive with the business of the corporation, and to remove the provision permitting officers to delegate their duties to other persons.

The Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibits 3.1, 3.2, respectively, and are incorporated by reference herein.

**Item 5.01. Change in Control of Registrant**

The information set forth in Item 1.01 under the caption entitled "Background" of this Current Report on Form 8-K is incorporated herein by reference. The full text of the Merger Agreement, including the amendments, as well as AxoGen press release dated September 30, 2011 announcing the completion of the Merger, are attached hereto as Exhibits 2.1, 2.2, 2.3 and 99.1 to this Current Report on Form 8-K and are incorporated by reference herein.

Pursuant to the Merger Agreement, two LecTec directors, Gregory G. Freitag and Robert J. Rudelius, continue to serve as directors of AxoGen after the Merger, while three other LecTec directors,

Timothy M. Heaney, Lowell Hellervik, Ph.D., and Elmer Salovich, M.D., resigned at the effective time of the Merger.

In connection with the Merger, Karen Zaderej, Chief Executive Officer of AC, has been appointed as President and Chief Executive Officer of AxoGen, and Gregory G. Freitag, Chief Executive Officer of LecTec, has been appointed as the Chief Financial Officer of AxoGen.

The following table sets forth the names and positions of the individuals who serve as executive officers and directors of AxoGen upon completion of the Merger.

| Name | Title |
|---|---|
| Karen Zaderej | President and Chief Executive Officer, Director |
| Gregory G. Freitag | Chief Financial Officer, Director |
| John P. Engels | Vice President |
| Jamie M. Grooms | Chairman of the Board of Directors |
| Mark Gold, M.D. | Director |
| John Harper | Director |
| Joe Mandato | Director |
| Robert J. Rudelius | Director |

**Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers**

(b) Reference is made to Item 5.01 of this Current Report on Form 8-K. Pursuant to the Merger Agreement, three LecTec directors, Timothy M. Heaney, Lowell Hellervik, Ph.D., and Elmer Salovich, M.D., resigned at the effective time of the Merger.

(c) Reference is made to Item 5.01 of this Current Report on Form 8-K. AxoGen's Board of Directors appointed the following individuals to serve in the positions set forth opposite to his/her name, effective as of the closing of the Merger:

| Name | Title |
|---|---|
| Karen Zaderej | President and Chief Executive Officer |
| Gregory G. Freitag | Chief Financial Officer |
| John P. Engels | Vice President |

Biographical information for the AxoGen executive officers is set forth in the Registration Statement, under the caption entitled "The Merger — Management Following the Merger — Executive Officers and Other Key Employees of the Combined Company." Such information is incorporated by reference herein.

(d) Reference is made to Item 5.01 of this Current Report on Form 8-K. Pursuant to the Merger Agreement, two LecTec directors, Gregory G. Freitag and Robert J. Rudelius, continue to serve as directors of AxoGen upon completion of the Merger, and the following AC directors are elected to serve as directors of AxoGen upon completion of the Merger: Karen Zaderej, Jamie M. Grooms, Mark Gold, M.D., John Harper and Joe Mandato. Mr. Grooms serves as Chairman of the Board of Directors.

Biographical and compensation information for the AxoGen directors is set forth in the Registration Statement, under the captions entitled "The Merger — Management Following the Merger — Proposed Directors of the Combined Company" and "Certain Information Concerning AxoGen —

AxoGen Executive Compensation — Director Compensation." Such information is incorporated by reference herein.

(e)

***Amendment and Restatement of the LecTec 2010 Stock Incentive Plan***

In connection with the Merger, all issued and outstanding options to purchase AC common stock are assumed by AxoGen and remain outstanding after the Merger. As a result of the Merger, such options are amended to provide for the purchase of AxoGen common stock and the number of shares issuable upon exercise and the exercise price of such options are adjusted.

In connection with the Merger, the LecTec Board of Directors approved the amended and restated 2010 Stock Incentive Plan on August 9, 2011. On September 27, 2011, at the LecTec 2011 Annual Meeting of Shareholders, LecTec shareholders approved the amended and restated 2010 Stock Incentive Plan. The 2010 Stock Incentive Plan was amended and restated to, among other things, increase the number of shares of common stock of LecTec authorized for issuance under the plan by 2,300,000 shares and to add new provisions or clarifying text to the plan to reflect recent changes in applicable laws and to permit the issuance of awards to employees of another corporation who become employees of LecTec through a merger, acquisition or other corporate transaction in substitution of their awards issued by the other corporation. Additional information regarding the LecTec 2010 Stock Incentive Plan is included in the Registration Statement, under the caption entitled "Certain Information Concerning LecTec — LecTec Executive Compensation — LecTec 2010 Stock Incentive Plan." Such information is incorporated by reference herein.

The description of the LecTec 2010 Stock Incentive Plan, as amended and restated on September 27, 2011, is qualified in its entirety by reference to the plan, which is attached hereto as Exhibits 10.7 and is incorporated by reference herein.

***Employment Agreements***

*Employment Agreement with Ms. Zaderej*

The employment agreement by and between AC and Karen Zaderej, President and Chief Executive Officer of AC, was effective October 15, 2007, and was amended effective September 29, 2011. In exchange for Ms. Zaderej's performance of duties commensurate with her position as President and Chief Executive Officer of AxoGen, Ms. Zaderej's employment agreement provides her with an annual base salary, which is currently $291,200, employee benefits at the level provided to similarly situated employees, and eligibility for bonuses based on AC's bonus plan and stock options in accordance with the applicable equity compensation plan. Ms. Zaderej is entitled to full vesting of her outstanding stock options upon a change in control.

The employment agreement renews for one year periods on each anniversary of the effective date, unless otherwise terminated by either AC or Ms. Zaderej at least 30 days prior to the renewal date, and provides for severance benefits upon termination of Ms. Zaderej's employment by: (1) AC for any reason other than substantial cause (as defined below), permanent disability, or death , (2) Ms. Zaderej due to AC's breach of the employment agreement and AC's failure to cure such breach within ten days following notice by Ms. Zaderej of such breach; or (3) Ms. Zaderej within six months of a "change in control" (as defined below). Upon a termination of Ms. Zaderej's employment for any of the reasons set forth above, Ms. Zaderej is entitled to continued payments of her base salary (at the rate in effect on the date of termination) for the remainder of the then current employment period or the one-year non-

competition period, whichever is longer. Additionally, Ms. Zaderej is entitled to continued medical and dental benefits (in the form of a reimbursement for the COBRA premiums) and continued bonus payments to which Ms. Zaderej would have been entitled for the remainder of the then current employment period had her employment not been terminated.

*Employment Agreement with Mr. Engels*

The employment agreement by and between AC and Mr. Engels, Vice President of AC, was effective May 6, 2003, and amended effective September 29, 2011. In exchange for Mr. Engels' performance of duties commensurate with his position, Mr. Engels' employment agreement provides him with an annual base salary, which is currently $171,392 (subject to increase but not decrease), and employee benefits at the level provided to similarly situated employees.

Mr. Engels' employment agreement renews for one year periods on each anniversary of the effective date, unless otherwise terminated by either AC or Mr. Engels at least 90 days prior to the renewal date. The agreement provides for severance benefits upon termination of Mr. Engels' employment by: (1) AC for any reason other than substantial cause, permanent disability, or death, (2) Mr. Engels due to AC's breach of the employment agreement and AC's failure to cure such breach within ten days following notice by the executive of such breach; or (3) Mr. Engels within six months following a change in control. Upon a termination of Mr. Engels' employment for any of the reasons set forth above, Mr. Engels is entitled to continued base salary payments (at the rate in effect on the date of termination) that he would have been paid for the remainder of the then current employment period had Mr. Engels' employment not been terminated. Additionally, Mr. Engels is entitled to continued medical and dental benefits (in the form of a reimbursement for the COBRA premiums) and continued bonus payments to which Mr. Engels would have been entitled for the remainder of the then current employment period had his employment not been terminated.

In connection with their employment, Ms. Zaderej and Mr. Engels executed (A) AC's standard non-competition and non-solicitation agreement, and (B) AC's standard invention assignment and confidentiality agreement. Mr. Engels is subject to the non-competition and non-solicitation covenants for two years following the termination of his employment for any reason or no reason, and Ms. Zaderej is subject to the non-competition covenant for one year following the termination of her employment for any reason or no reason and the non-solicitation covenant for two years following the termination of her employment for any reason or no reason.

For purposes of Ms. Zaderej's employment agreement, "substantial cause" means Ms. Zaderej's (a) commission of any act of fraud, theft, or embezzlement; (b) material breach of the employment agreement, provided that AC shall have first delivered to Ms. Zaderej written notice of the alleged breach, specifying the exact nature of the breach in detail, and provided, further, that Ms. Zaderej shall have failed to cure or substantially mitigate such breach within ten 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 AC'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 AC. For purposes of Mr. Engels' employment agreement "substantial cause" means the commission by Mr. Engels of any act of fraud, theft or embezzlement.

For purposes of the employment agreements, "change in control" means the occurrence of any of the following events: (i) any person who holds less than 20% of the combined voting power of the securities of AC, becomes the beneficial owner, directly or indirectly, of securities of AC representing 50% or more of the combined voting power of the securities of AC then outstanding; (ii) during any

period of 24 consecutive months, individuals, who, at the beginning of such period constitute all members of the AC's Board of Directors and cease, for any reason, to constitute at least a majority of the board of directors, unless the election of each director who was not a director at the beginning of the period was 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; (iii) AC consolidates or merges with another company and AC is not the continuing or surviving corporation; (iv) shares of AC's common stock are converted into cash, securities, or other property (other than by a merger set forth in (iii) above), in which the holders of AC'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; (v) AC sells, leases, exchanges, or otherwise transfers all or substantially all of its assets (in one transaction or in a series of related transactions); or (vi) the holders of AC's stock approve a plan or proposal for the liquidation or dissolution of AC.

As a result of the Merger, Ms. Zaderej and Mr. Engels are employed by AxoGen and the obligations of AC under their respective employment agreements are obligations of AxoGen and the executive officers' obligations under their respective employment agreements will be carried out with respect to AxoGen.

The description of the employment agreements with Ms. Zaderej and Mr. Engels is qualified in its entirety by reference to the underlying agreements, which are attached hereto as Exhibits 10.8.1, 10.8.2, 10.9.1 and 10.9.2, and are incorporated by reference herein.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws**

The information set forth in Item 3.03 of this Current Report on Form 8-K is incorporated by reference herein.

**Item 8.01. Other Events.**

The information set forth in Item 1.01 under the caption entitled "Background" of this Current Report on Form 8-K is incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits**

(a) Financial Statements of Businesses Acquired

AC's audited financial statements as of and for the years ended December 31, 2010 and 2009, and AC's unaudited financial statements as of and for the six months ended June 30, 2011, were included in the Registration Statement, from page F-29 to page F-71. Such information is incorporated by reference herein.

(b) Pro Forma Financial Information

The unaudited pro forma condensed combined financial statements describing the pro forma effect of the business combination of LecTec and AC on AxoGen's (i) unaudited balance sheets as of June 30, 2011 and (ii) unaudited statements of operations for the six months ended June 30, 2011 and for the year ended December 31, 2010, are filed herewith as Exhibit 99.2 and are incorporated by reference herein.

(d) Exhibits

| Exhibit No. | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated as of May 31, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Exhibit 2.1 to LecTec Corporation's Current Report on Form 8-K filed on June 2, 2011) |
| 2.2 | Amendment No. 1 to Agreement and Plan of Merger, dated as of June 30, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Appendix A2 to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 2.3 | Amendment No. 2 to Agreement and Plan of Merger, dated as of August 9, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Appendix A3 to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 3.1 | Amended and Restated Articles of Incorporation of AxoGen, Inc. (incorporated by reference to Appendix B to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 3.2 | AxoGen, Inc. Amended and Restated Bylaws. (incorporated by reference to Appendix C to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 10.1* | Patent License Agreement, dated as of August 3, 2005, by and between AxoGen Corporation and the Board of Regents of the University of Texas System |
| 10.2* | Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms, dated as of February 21, 2006, by and between AxoGen Corporation and the University of Florida Research Foundation, Inc. |
| 10.3* | Sid Martin Biotechnology Development Institute Incubator License Agreement, dated as of September 26, 2006, by and between AxoGen, Inc. and the University of Florida Research Foundation, Inc. |
| 10.4.1* | Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, by and between AxoGen Corporation and LifeNet Health |
| 10.4.2* | Second Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of August 9, 2011, by and between AxoGen Corporation and LifeNet Health |
| 10.5* | Distribution Agreement, dated as of August 27, 2008, by and between AxoGen, Inc. and Cook Biotech Incorporated |
| 10.6 | Loan and Security Agreement, dated as of September 30, 2011, by and among AxoGen, Inc. and AxoGen Corporation, as borrower, Midcap Financial SBIC, LP, as administrative agent, and the Lenders listed on Schedule 1 thereto |
| 10.7 | LecTec Corporation 2010 Stock Incentive Plan, Amended and Restated on September 27, 2011 (incorporated by reference to Appendix E to the Proxy Statement/Prospectus included |

| | |
|---|---|
| | as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 10.8.1 | Executive Employment Agreement, effective as of October 15, 2007, by and between AxoGen Corporation and Karen Zaderej |
| 10.8.2 | Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and Karen Zaderej |
| 10.9.1 | Executive Employment Agreement, effective as of May 6, 2003, by and between AxoGen Corporation and John P. Engels |
| 10.9.2 | Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and John P. Engels |
| 99.1 | Press Release of AxoGen, Inc., dated as of September 30, 2011 |
| 99.2 | Unaudited pro forma condensed combined financial statements describing the pro forma effect of the business combination on AxoGen, Inc. (i) unaudited balance sheet as of June 30, 2011 and (ii) unaudited statement of operations for the six months ended June 30, 2011 and the year ended December 31, 2010 |

* Confidential treatment has been requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

**SIGNATURE**

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

AXOGEN, INC.

By: /s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer

## EXHIBIT INDEX

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| 10.3* | Sid Martin Biotechnology Development Institute Incubator License Agreement, dated as of September 26, 2006, by and between AxoGen, Inc. and the University of Florida Research Foundation, Inc. |
| 10.4.1* | Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, by and between AxoGen Corporation and LifeNet Health |
| 10.4.2* | Second Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of August 9, 2011, by and between AxoGen Corporation and LifeNet Health |
| 10.5* | Distribution Agreement, dated as of August 27, 2008, by and between AxoGen, Inc. and Cook Biotech Incorporated |
| 10.6 | Loan and Security Agreement, dated as of September 30, 2011, by and among AxoGen, Inc. and AxoGen Corporation, as borrower, Midcap Financial SBIC, LP, as administrative agent, |

| | |
|---|---|
| | and the Lenders listed on Schedule 1 thereto |
| 10.7 | LecTec Corporation 2010 Stock Incentive Plan, Amended and Restated on September 27, 2011 (incorporated by reference to Appendix E to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 10.8.1 | Executive Employment Agreement, effective as of October 15, 2007, by and between AxoGen Corporation and Karen Zaderej |
| 10.8.2 | Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and Karen Zaderej |
| 10.9.1 | Executive Employment Agreement, effective as of May 6, 2003, by and between AxoGen Corporation and John P. Engels |
| 10.9.2 | Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and John P. Engels |
| 99.1 | Press Release of AxoGen, Inc., dated as of September 30, 2011 |
| 99.2 | Unaudited pro forma condensed combined financial statements describing the pro forma effect of the business combination on AxoGen, Inc. (i) unaudited balance sheet as of June 30, 2011 and (ii) unaudited statement of operations for the six months ended June 30, 2011 and the year ended December 31, 2010 |

* Confidential treatment has been requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

**Exhibit 10.1**

**Confidential treatment requested under 17 C.F.R. §§ 200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.**

# PATENT LICENSE AGREEMENT

This Agreement is between the Board of Regents ("Board") of The University of Texas System ("System"), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, and Axogen Corporation., a corporation having a principal place of business located at 2153 SE Hawthorne Road, Gainesville, FL, 32641 ("Licensee").

## TABLE OF CONTENTS

The University of Texas at Austin
Licensee: _____
_____
UTA No.: _____
_____

**Exhibit A: Licensed Patents**

**Exhibit B: Royalty Report**

**Exhibit C: Progress Report and Commercialization Plan**

**Exhibit D: Capitalization Table**

## 1. Recitals

A. WHEREAS, Board owns rights to the Licensed Subject Matter that was developed at The University of Texas at Austin ("University"), a component institution of System; and

B. WHEREAS, Licensee desires to secure the right and license to use, develop, manufacture, market, and commercialize the Licensed Subject Matter; and

C. WHEREAS, Board has determined that such use, development and commercialization of the Licensed Subject Matter is in the public's best interest and is consistent with Board's educational and research missions and goals; and

D. WHEREAS, Board desires to have the Licensed Subject Matter developed and used for the benefit of Licensee, Inventor, Board and the public as outlined in Board's Intellectual Property Policy.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties agree as follows:

## 2. Definitions

2.1 "**Actively Commercialize**" means having programs for: (i) research and development for Licensed Product(s) and for obtaining any required regulatory approvals for said Licensed Product(s), and (ii) in due course, for manufacturing, marketing and Sales of Licensed Product(s), all in a Licensed Field in the Licensed Territory, and all in accordance with Licensee's Progress Report and Commercialization Plan.

2.2 "**Affiliate**" means any Entity more than 50% owned by Licensee, any Entity which owns more than 50% of Licensee, or any Entity that is more than 50% owned by an Entity that owns more than 50% of Licensee.

2.3 "**Board's Intellectual Property Policy**" means The University of Texas Regents' Rule and Regulations, Part Two, Chapter XII.

2.4 "**Confidential Information**" means all information that is of a confidential and proprietary nature to University or to Licensee and its Affiliates, as further discussed in Section 9 ("Confidentiality"), including information disclosed during any discussions or negotiations pertaining to this Agreement, or information that is disclosed pursuant to this Agreement.

2.5 "**Effective Date**" means July 19, 2005.

2.6 "**Entity**" means a corporation, an association, a joint venture, a partnership, a trust, a business, an institution, an individual, a government or political subdivision thereof, including an agency, or any other organization that can exercise independent legal standing.

2.7 **"Fair Market Value"** means the cash consideration which Licensee or its Sublicensee would realize from an unaffiliated, unrelated buyer in an arm's length Sale of an identical item sold in the same quantity, under the same terms, and at the same time and place.

2.8 **"Indemnitees"** will have the meaning set forth in Section 15 ("Indemnification").

2.9 **"Insolvent"** means being unable to meet one's debt obligations to another Entity as such debt obligations become due and not being able to provide reasonable financial assurances of becoming able to meet such obligations.

2.10 **"Inventor/Principal Investigator"** means Dr. Christine Schmidt.

2.11 "Valid and Issued Claim" means a valid claim that is included in a patent issued and approved from the relevant patent authority in the relevant territory and is included in Licensed Patents.

2.12 **"Licensed Field"** means all applications relating to nerve regeneration and repair.

2.13 **"Licensed Patents"** means those United States patent applications and patents listed in Exhibit A and any corresponding foreign patent applications and patents, and any improvements, divisionals, continuations, reissues, and reexaminations thereof to the extent that the claims are directed to the subject matter within the Licensed Field.

2.14 **"Licensed Product(s)"** means any product(s) whose manufacture, use or sale is covered by any Valid and Issued claim of the Licensed Patents; or product(s) which are made using a process or machine covered by a Valid and Issued claim of the Licensed Patents; or product(s) made, at least in part, using Valid or Issued Claims of the Licensed Patents. Licensed Product(s) will also include any service rendered through the use of a product, process or machine covered by any Valid and Issued claim of the Licensed Patent.

2.15 **"Licensed Subject Matter"** means the Licensed Patents and Licensed Technology within the Licensed Field.

2.16 **"Licensed Technology"** means technical data and information created by Inventor at University until two years after the Effective Date that are not included in the Licensed Patents but which are necessary for practicing the invention covered by Licensed Patents within the Licensed Field.

2.17 **"Licensed Territory"** means worldwide, subject to the then-current applicable article, item, service, technology, and technical data-specific requirements of the U.S. export laws and regulations.

2.18 **"Net Sales"** means the gross revenue, monies or cash equivalent, received by Licensee, Affiliates or Sublicensees from the Sale of Licensed Products less the following items directly attributable to the Sale of such Licensed Products by Licensee, Affiliates or Sublicensees, and specifically identified on the invoice, included in the gross revenues, and borne by the seller: (a) discounts, rebates, or returns sales, use, customs, duties or other similar taxes and handling charges and allowances; (b) sales and use taxes actually paid by the seller;; .and (c) outbound transportation expenses.

2.19 **"Progress Report and Commercialization Plan"** means the progress report and commercialization plan due from Licensee to University in the form set forth in Exhibit B as referenced in section 6.2.

2.20 **"Royalty Report"** means the report due from Licensee to University in the form set forth in Exhibit C.

2.21 **"Sale or Sold"** means any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer, or other disposition of Licensed Product(s). A Sale will be deemed completed at

the time Licensee or its Affiliate or its Sublicensee invoices, ships, or receives payment for such Licensed Product(s), whichever occurs first.

2.22 **"Sublicensee"** means any party other than an Affiliate that enters into an agreement or arrangement with Licensee or receives a license grant from Licensee under the Licensed Patents to manufacture, have manufactured, offer for sale, sell, lease, and/or import the Licensed Products.

2.23 **"Sublicensee Breach"** is defined in Section 3.3(d)

2.24 **"Sublicensee Fees"** are defined in Section 4.5

2.25 **"Term of this Agreement"** will commence on the Effective Date and continue until the date of expiration of the last to expire of the Licensed Patents.

## 3. Grant

3.1 Exclusive Grant

a. Board grants to Licensee a royalty-bearing, exclusive license under Licensed Patents to manufacture, have manufactured, offer for sale, sell, lease, and/or import Licensed Products in the Licensed Field in the Licensed Territory. This grant is subject to the payment by Licensee to University of all consideration required under this Agreement, to any rights of the Government of the United States as set forth in Section 12.2 ("Government Rights"), and is further subject to rights retained by Board and University to:

i. publish the general scientific findings from research conducted in whole or in part at University or otherwise within the System related to Licensed Subject Matter subject to the terms of Section 9 ("Confidentiality"); and

ii. use the Licensed Subject Matter for research, teaching and other educationally-related purposes without any royalty obligations for such use.

b. Board grants to Licensee a royalty-bearing, exclusive license under the Licensed Technology to manufacture, have manufactured, offer for sale, sell, lease, and/or import Licensed Products in the Licensed Field in the Licensed Territory.

3.2 Affiliates

Licensee may extend the license granted herein to any Affiliate if the Affiliate consents in writing to be bound by this Agreement to the same extent as Licensee; provided, however, that any fee or other consideration paid to Licensee in consideration of such extension will be subject to the provisions of Section 4.4("Assignment"). Other agreements or arrangements with Affiliates relating to Licensed Subject Matter which result in the Sale of Licensed Product(s) will be subject to the royalty payment and other applicable payment provisions of this Agreement.

3.3 Sublicensing

Licensee will have the right to grant sublicenses to third parties under Section 3.1 (Grant), subject to the following conditions:

a. In each such sublicense, the Sublicensee will be permitted to grant further sublicenses, but only on the condition that any such sublicense will be subject to the terms and conditions of the license granted to Licensee under this Agreement, including payments to University of Sublicensee Fees based upon consideration paid by any further sublicensee for any such further sublicense.

b. Licensee will forward to University, within thirty (30) days following its execution, a fully executed, complete and accurate copy written in the English language of each sublicense granted under this Agreement. University's receipt of such sublicense will not constitute a waiver of any of Board's rights or Licensee's obligations under this Agreement.

c. If Licensee becomes Insolvent, Board's proportionate share of all payments then or thereafter due and owing to Licensee from its Sublicensees for the sublicense of the Licensed Patents will, upon notice from Board or University to any such Sublicensee, become payable directly to University for the account of Licensee; provided however, that University will remit to Licensee the amount by which such payments exceed the amounts owed by Licensee to Board.

d Notwithstanding any such sublicense, Licensee will remain primarily liable to Board for all of Licensee's duties and obligations contained in this Agreement, and any act or omission of a Sublicensee that would be a breach of this Agreement if performed by Licensee will be deemed to be a breach by Licensee of this Agreement. Each sublicense will contain a right of termination by Licensee in the event that the Sublicensee breaches the payment obligations affecting Board or any other material terms and conditions of the sublicense that would constitute a breach of the terms and conditions of this Agreement if such acts were performed by Licensee (a "Sublicensee Breach"). In the event of a Sublicensee Breach, and if after a reasonable opportunity to cure as provided in any such Sublicensee, such Sublicensee fails to cure such Sublicensee Breach, then Licensee will terminate the sublicense unless Board agrees in writing that such sublicense need not be terminated. Such Sublicensee Breach and termination of a Sublicensee's sublicense will not affect the term of Licensee's license hereunder or the sublicense of any non-breaching Sublicensee.

e Upon termination of this Agreement for any reason, all sublicenses will, at Board's option, be (a) assigned to and assumed by Board, or (b) terminated.

**4. Fees and Royalties**

In consideration of rights granted by Board to Licensee under this Agreement, Licensee will pay University the following fees and royalties. Each payment will reference UTAUS Agreement No. PM0505001 and will be made separately from any other fees or payments due under this Agreement and sent to the address in Section 6.1 ("Payments").

4.1 Running Royalty

4.2 After the first of; two years after the Effective Date; or the issuance of a Valid and Issued Claim in the relevant territory, Licensee will pay a running royalty equal to [**]% of Net Sales for Licensed Product(s) Sold by Licensee or Affiliate that are covered by valid claims of the Licensed Patents [**] or divisionals, continuations, reissues, and reexaminations thereof.

Royalty payments will be made simultaneously with the delivery of the quarterly Royalty Reports required under Section 5.1 ("Royalty Reports").

Notwithstanding the royalty rates set forth in Sections 4.1 ("Running Royalty") and, if Licensee, Sublicensee, or Affiliate is required to pay royalties to third parties in connection with the Sale of Licensed Product(s) either under license agreements for other technologies which Licensee, in Licensee's,

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

Sublicensee's, or Affiliate's reasonable judgment, determines are desirable to be incorporated in such Licensed Product(s), or under license agreements with third parties that are joint owners of patent applications or patents within the Licensed Patents, and the total royalties to be paid by Licensee to University and third parties would exceed [**]% on Sales of Licensed Product(s) (the "Applicable Royalty Stack Cap") the amount to be paid under Section 4.1 ("Running Royalty") will be calculated as follows:

The royalty payments to Board will be reduced by an amount proportionate to the amount by which the total royalties exceeds the Royalty Stack Cap. Specifically:

$$R2 = R1 \times (\text{Applicable Royalty Stack Cap} / T)$$

where R1 is the earned royalties due the Board hereunder;
R2 is the adjusted reduced royalty rate due hereunder;
T is the total royalty due to all licensors; and
Applicable Royalty Stack Cap: [**]%.

For example, if one additional licenses are needed from one additional third party, and this other royalty rate is [**]% and the earned royalties also due the Board are [**]%, then the value of T is [**]%, and the royalty rate under this Agreement, as adjusted will be [**] or [**]%. However, the percentage due the Board will never be reduced to less than [**]%.

4.3 Past Patent Expenses

Licensee will pay $[**] as reimbursement for past expenses in filing and prosecuting patent applications included in Licensed Patents due and payable no later than October 15, 2005 . Licensee will pay future patent expenses as set forth in Section 7 ("Future Patent Expenses and Prosecution").

4.4 Sublicensee Fees and Royalites

Within thirty (30) days after receipt of payment by Licensee, Licensee will promptly pay University the following percent of any sublicense fee, sublicense milestone payment, royalties and other consideration, excluding equity in investments in Licensee in which no license or sublicense rights are conveyed, payable.by each Sublicensee to Licensee or an Affiliate in consideration for Sublicense of the Licensed Patents, excluding funds or materials paid to Licensee exclusively for research and development related to Licensed Product(s) and, provided further, that the rights granted to sublicensee are limited to research and development work (so long as the funding does not reflect a premium of more than [**]% over Licensee's actual costs to perform said work) and do not permit the Sale of the Licensed Product(s) (collectively called "Sublicensee Fees"):

a. Before the first Sale of Licensee's nerve graft product, [**] percent ([**]%) of Sublicense Fees for any Sublicense executed.

b. After the first Sale of Licensee's nerve graft product, [**] percent ([**]%) of Sublicense Fees for any Sublicense executed.

Any non-cash consideration, not including equity investments in Licensee, received by Licensee or an Affiliate from such Sublicensees will be valued at its Fair Market Value as of the date of receipt by Licensee or an Affiliate.

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4.5 Milestone Fees and Milestones

Licensee will meet development milestones for Licensed Product(s) as outlined below in accordance with the following schedule:

a. As of April 1, 2006, Licensee, with Inventor's input, will submit at least one grant application for the further development of Licensed Products. Licensee and Inventor will equitably split any grant monies based on the work scope. University's share of grant monies will be payable within 30 days of receipt by Licensee.

b. Within 24 months of the realization of revenue using Licensed Subject Matter, Licensee will pay to University a milestone fee of [**] ($[**]).

c. Within 30 days of receiving its first Phase II award for an SBIR or STTR grant involving the Licensed Technology, Licensee will pay to the University a milestone fee of $15,000.

d. Within 30 days of receiving a Valid Claim of a Licensed Patent that protects the ongoing commercial sale of a Licensed Product, or within 30 days of commercial sale of a Licensed Product protected by a Valid Claim of the Licensed Patent, whichever comes first, Licensee will pay the University a milestone of $[**].

Each required payment will be paid to University by the date listed above.

4.6 Actively Commercialize

Licensee shall actively commercialize the Licensed Subject Matter during the Term of this Agreement.

**5. Reports and Plans**

5.1 Royalty Reports

Within 30 days after March 31, June 30, September 30, and December 31, beginning immediately after the Effective Date, Licensee will deliver to University a true and accurate written Royalty Report, certified by the chief financial officer or similar officer of Licensee even if no payments are due Board, giving the particulars of the business conducted by Licensee, Affiliate and its Sublicensee(s), if any exist, during the preceding 3 (three) calendar months as are pertinent to calculating payments hereunder. This report will be in the form set forth in Exhibit C (Form of Royalty Report). University may change the required Form of Royalty Report upon ninety (90) days notice to Licensee. Simultaneously with the delivery of each report, Licensee will pay to University the amount due, if any, for the period of each Royalty Report. Licensee's failure to submit a Royalty Report in the required form will constitute a breach of this Agreement. Licensee will continue to deliver Royalty Reports to University after the termination or expiration of this Agreement until such time as all Licensed Product(s) permitted to be Sold after termination have been Sold or destroyed.

5.2 Progress Report and Commercialization Plan

On or before each anniversary of the Effective Date, whether or not a first Sale or offer for Sale has occurred, Licensee will deliver to University a true and accurate written Progress Report and Commercialization Plan, certified by the chief operating officer or similar officer of Licensee, as to Licensee's (and any Sublicensee's) efforts and accomplishments during preceding year in Commercializing the Licensed Subject Matter in the Licensed Territory and Licensee's (and any Affiliate's and/or Sublicensee's) plans for the upcoming year for commercializing the Licensed Subject Matter. The

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

Progress Report and Commercialization Plan will be in the form set forth in Exhibit B. University may change the required Form of Progress Report and Commercialization Plan upon ninety (90) days notice to Licensee. Licensee's failure to submit a Progress Report and Commercialization Plan in the required form will constitute a breach of this Agreement.

The Progress Report and Commercialization Plan will be sent to:

Office of Technology Commercialization
The University of Texas at Austin
3925 West Braker Lane, Suite 1.9A
MCC Building, Mail Code: R3500
Austin, Texas 78759
Attn: Contract Manager

**6. Payment, Records, and Audits**

6.1 Payments

All dollar amounts referred to in this Agreement are expressed in United States dollars without deductions for taxes, assessments, fees, or charges of any kind. Each payment will reference UTA US Agreement No. PM0505001 and will be made separately from any other fees or payments due under this Agreement. All payments to University will be made in United States dollars by check payable to "The University of Texas at Austin" and sent to:

Office of Technology Commercialization
The University of Texas at Austin
3925 West Braker Lane, Suite 1.9A
MCC Building, Mail Code: R3500
Austin, Texas 78759
Attn: Accounts Receivable

6.2 Sales Outside the U.S.

The remittance of royalties payable on Sales made outside the United States will be payable to University in United States Dollar equivalents; provided, however if any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rates used by Licensee in calculating Licensee's own revenues for financial reporting purposes in accordance with Generally Accepted Accounting Principles. If the transfer of or the conversion into the United States Dollar equivalents of any such remittance in any such instance is not lawful or possible, the payment of such part of the royalties as is necessary will be made by the deposit thereof, in the currency of the country where the Sale was made on which the royalty was based to the credit and account of University or its nominee in any commercial bank or trust company of University's choice located in that country, prompt written notice of which will be given by Licensee to University.

6.3 Late Payments

Amounts that are not paid when due will accrue interest from the due date until paid, at a rate equal to one percent (1.0%) per month (or the maximum allowed by law, if less).

6.4 Records

Licensee will maintain, and cause its Sublicensees and Affiliates to maintain complete and accurate books and records that enable all royalties payable under this Agreement to be verified. The records for each calendar quarter will be maintained for three (3) years after the submission of each report under Section 5.1 ("Royalty Reports").

6.5 Auditing

Upon reasonable prior notice to Licensee, Affiliates, or Sublicensees, University or its representatives or its appointed accountants will have access to such books and records relating to Net Sales as necessary to conduct a review or audit of Net Sales and verify all royalty reports submitted and royalty payments. Such access will be available to University upon not less than ten (10) days written notice to Licensee, Affiliates, or Sublicensees, not more than once each calendar year of the Term, during normal business hours, and once a year for three years after the expiration or termination of this Agreement. Whenever these books and records are audited by an independent certified public accountant, University will, within (thirty) 30 days of the conclusion of such audit, provide to Licensee a written statement, certified by said auditor, setting forth the calculation of royalties due to University over the time period audited as determined from the audit of paid books and records. If such audit indicates that Licensee, Affiliates, or Sublicensees has underpaid royalties by more than 10%, Licensee will pay the reasonable costs and expenses incurred by University and its representatives and accountants, if any, in connection with the review or audit and Licensee will immediately remit such underpaid royalties and Sublicensee Fees and any accrued interest to University.

**7. Future Patent Expenses and Prosecution**

7.1 Future Patent Expenses

Licensee will pay future expenses incurred after Effective Date for filing, prosecuting, enforcing, and maintaining the Licensed Patents.

7.2 Default in Payment

In the event that Licensee fails to pay any patent expenses required under this Agreement, and said default is not cured within sixty (60) days after receipt of notification that such expenses are due, then University may pursue its remedies as specified in Section 9.3. Alternatively, University may require and request that Licensee establish with a bank approved by University, an irrevocable and confirmed letter of credit (not restricted, unless otherwise agreed upon) in the amount of US $[**] in favor of University available immediately to secure the payment of patent expenses due under this Agreement. University may draw upon such letter of credit upon presentation of the letter notifying Licensee of patent expenses due and payable and a statement from University of Licensee's failure to pay; and Licensee will cause the bank to restore the letter of credit to the US $[**] level. In the event that Licensee does not establish (or restore) such letter of credit within thirty (30) days of University's request, then Board may immediately terminate this Agreement.

7.3 Patent Attorney

University will work closely with Licensee to develop a suitable strategy for the prosecution and maintenance of all Licensed Patents; provided that Board will maintain final authority in all decisions regarding the patent attorney who prosecutes and maintains the Licensed Patents. University will confer with Licensee regarding the choice of patent counsel and will identify to Licensee the patent attorney selected to prosecute the Licensed Patents. It is intended that Licensee will interact directly with the selected patent counsel in all phases of patent prosecution: preparation, office action responses, filing strategies for continuation or divisional applications, and

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

other related activities. University will request that copies of all documents prepared by the selected patent counsel be provided to Licensee for review and comment prior to filing to the extent practicable under the circumstances. Licensee will be billed and will pay all documented costs and fees and other charges incident to the preparation, prosecution, and maintenance of the Licensed Patents within sixty (60) days of receipt of invoice. All patent applications and patents will be in the name of Board, owned by Board and included as part of the Licensed Patents licensed pursuant to this Agreement.

If Licensee has a strong need to use a patent attorney other than the patent attorney selected by University, Licensee and University will cooperate to endeavor to select a patent attorney who is mutually approved by both Licensee and University. Any such mutually selected patent attorney will be required to keep both Licensee and Board, as co-clients, equally informed and involved as to all material information, material communications with governmental patent offices, material issues and decisions, and related matters applicable to prosecuting the patent applications for the Licensed Patents and for maintaining the Licensed Patents in good standing. Decisions for prosecuting the patent applications will be made so as to obtain as broad of patent protection as is reasonable and practical under the circumstances. Board will request that copies of all documents prepared by the selected patent attorney be provided to Licensee for review and comment prior to filing to the extent practicable under the circumstances.

Licensee will be billed in accordance with 7.1 above and will pay all documented costs and fees and other charges incident to the preparation, prosecution, and maintenance of the Licensed Patents, within thirty (30) days after receipt of invoice from the selected patent attorney. Licensee will promptly notify Board of its plans to file, revise or drop any patent application or claim which may adversely affect the Licensed Patents or the rights or royalties of Board in the Licensed Subject Matter under this Agreement. Licensee and the selected patent attorney shall not change any inventorship designations, and shall not drop or reduce any claim in a pending patent application which may adversely affect the Licensed Patents or royalties of Board in the Licensed Subject Matter without written University approval.

## 8. Term and Termination

8.1 Termination at End of Term

This Agreement, unless sooner terminated as provided herein, will terminate at the end of the Term of this Agreement as defined in Section 2 (“Definitions”).

8.2 Termination by Licensee

Licensee, at its option, may terminate this Agreement at any time by doing all of the following:

a. By ceasing to develop, make, have made, use and sell and/or import any Licensed Product(s);

b. By giving sixty days (60) days prior written notice to Board of Licensee’s termination. Licensee agrees that Board and University may immediately begin negotiations with other potential licensees upon delivery of such notice to Board and that all other obligations of Licensee under this Agreement will continue until the date of termination; and

c. By tendering payment of all accrued royalties and other payments due to Board as of the date of the termination.

Licensee, at its option, may terminate this Agreement upon written notice to Board if Board breaches this Agreement and does not cure such breach within sixty (60) days after the delivery of written notice from Licensee.

8.3 Termination by Board

Board, at its option, may immediately terminate this Agreement, or any part of Licensed Subject Matter, or any part of Licensed Field, or any part of Licensed Territory, upon delivery of written notice to Licensee of Board’s intent to terminate, if any of the following occur:

a. Licensee fails to Actively Commercialize Licensed Subject Matter during the Term of this Agreement; or

b. Licensee has not had a Sale of any Licensed Product(s) within three (3) years after the Effective Date; or

c. Licensee has had time to meet and has not met and satisfied any one of the specified milestones in Section 4.6; or

d. Licensee becomes more than sixty (60) days in arrears in any payments, fees or other expenses due under to this Agreement; or

e. Licensee is in breach of any provision of this Agreement, and does not cure such breach within sixty (60) days after delivery of written notice from Board. "Breach" includes, but is not limited to, provisions of this Agreement for which Licensee is on specific notice that a specific action, or failure to perform a specific action, constitutes a breach, including but not limited to Section 6.1 ("Royalty Reports"), Section 8.2 ("Default in Payment"), Section 8.1 ("Future Patent Expense Payment Plan), and Section 11.4 ("Board's Prosecution Rights").

Furthermore, if, in any one twelve (12) month period, Board or University delivers notice to Licensee of three (3) or more breaches of this Agreement, even in the event that Licensee cures such breaches in the allowed period, Board may immediately terminate this Agreement upon delivery of notice of termination to Licensee.

8.4 Other Conditions of Termination

This Agreement will earlier terminate:

a. Immediately without the necessity of any action being taken by Board or Licensee, if Licensee becomes bankrupt or Insolvent and/or if the business of Licensee is placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Licensee or otherwise; or

b. at any time by mutual written agreement between Licensee and Board and subject to any terms herein which survive termination.

8.5 Survival

If this Agreement is terminated for any reason:

a. except in the case of termination under Section 8.1 ("Termination at End of Term"), Licensee will immediately cease use of confidential Licensed Subject Matter;

b. Licensee will comply with the provisions of Section 9.4 ("Copies");

c. nothing in this Agreement will be construed to release either party from any obligation that matured prior to the effective date of termination; and

d. after the effective date of termination, Licensee may sell all Licensed Product(s) and parts thereof that it has on hand at the effective date of termination; provided, however, that Licensee's royalty obligations will continue until all Licensed Product(s) have been sold.

The provisions of Sections 9 ("Confidentiality"), 101 ("Infringement and Litigation"), 12 ("Representations and Disclaimers"), 14 ("Limit of Liability"), 15 ("Indemnification"), 16 ("Insurance"), 19 ("Use of Name"), and 201 ("General Provisions") will survive any termination or expiration of this Agreement.

**9. Confidentiality**

9.1 Protection and Marking

Any disclosure of Confidential Information is made in the strictest confidence. The Licensee and University will make all reasonable efforts to ensure the protection, confidentiality and security of any Confidential Information in its possession, such efforts to be no less than the degree of care employed by the Licensee or University to preserve and safeguard its own confidential information. Confidential Information will be transmitted in writing and clearly marked "Confidential", "Proprietary" or similarly, or if disclosed orally will be reduced to writing by the University, clearly marked "Confidential", "Proprietary" or similarly, and transmitted to the Licensee in accordance with Section 19 ("Notices") within thirty (30) days of oral disclosure.

9.2 Non-Disclosure

Each party to this Agreement may disclose the Confidential Information to its own employees in connection with the rights granted under this Agreement; provided, however, that such employees will have agreed to be bound by the terms of this Agreement or have entered into an agreement of similar scope and obligations to protect the confidential information of such party or the confidential information of third parties in such party's possession. In no event will either party disclose Confidential Information to third parties without the written consent of the other party; provided, however, that Licensee may disclose Confidential Information to its consultants, other non-employees retained because of their standing and expertise in the area, and customers or potential customers; provided, that such consultant, non-employee, or customers or potential customers have executed a written non-disclosure and non-use agreement containing terms and conditions approved in writing by University. A copy of any such executed agreement will be provided to University in the manner set forth in Section 20 ("Notices").

9.3 Non-Use

Licensee or University will not use any Confidential Information for any reason other than in connection with practice or exercise of the rights granted under this Agreement without the prior written consent of the Board or University.

9.4 Copies

The Licensee and University agrees not to copy or record any Confidential Information except as reasonably necessary for University or Licensee to practice or exercise the rights granted under this Agreement. Within five (5) days after the termination of this Agreement, upon request of the University or Licensee, Licensee or University will deliver to the other all copies or records of Confidential Information in its possession or control, or will certify in writing to the other that the Confidential Information has been destroyed.

9.5 Continuing Obligations

Subject to the exceptions listed below, the Licensee's and University's obligations under this Agreement will survive termination of this Agreement and will continue for a period of five (5) years.

Confidential Information will not include any information which:

a. can be demonstrated to have been in the public domain as of the Effective Date of this Agreement or comes into the public domain during the term of this Agreement through no fault of the party who received the other party's Confidential Information;

b. can be demonstrated, from written records, to have been known to one of the Parties to this Agreement prior to the Effective Date of this Agreement and was not acquired, directly or indirectly, from the Board or University or from a third party under a continuing obligation of confidentiality or limited use;

c. can be demonstrated to have been rightfully received by one of the Parties from a third party who did not require the Parties to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, from the Parties a continuing obligation of confidentiality; or

d. is required to be disclosed by a court of competent jurisdiction after giving maximum practical notice to the Licensee or Board and University.

9.6 Degree of Care and Survival of Obligations

Licensee's and University's obligation of confidence hereunder will be fulfilled by using at least the same degree of care with the Confidential Information as Licensee uses to protect its own confidential information.

9.7 Publication by University

University will submit its manuscript for any proposed publication of research related to Licensed Subject Matter to Licensee at least thirty (30) days before publication, and Licensee will have the right to review and comment upon the publication in order to protect Licensee's confidential information. Upon Licensee's request, publication will be delayed up to sixty (60) additional days to enable Licensee to secure adequate intellectual property protection of Licensee's property that would be affected by the publication.

9.8 Copyright Notice

The placement of a copyright notice on any Confidential Information will not be construed to mean that such information has been published and will not release Licensee from its obligation of confidentiality hereunder.

**10. Infringement and Litigation**

10.1 Notification

University and Licensee are responsible for notifying each other promptly of any infringement of Licensed Patents or any misappropriation of Confidential Information or Licensed Technology that may come to their attention. University and Licensee will consult one another in a timely manner concerning any appropriate response thereto.

10.2 Licensee Prosecution Rights

Licensee will have the right, but not the obligation to prosecute such infringement or misappropriation at its own expense. Licensee will not settle or compromise any such suit in a manner that imposes any obligations or restrictions on Board or University or grants any rights to Licensed Patents or Licensed Technology, without Board's prior written consent. At the time of filing any infringement enforcement action, Board and Licensee will determine how any damages awarded will be distributed between Board and Licensee; using as a guide and provided that in no event will Board's distribution be less than an amount that would have been due Board based upon Section 4.5 ("Sublicensee Fees") as if the litigation recovery had been a Sublicensee Fee, or if no Sublicensee Fee is due to Board, subject first to any payments that would have been due University based upon Section 4.1 ("Running Royalty") as if the litigation recovery had been from a Sale.

10.3 Board's Right to Intervene

If Licensee shall fail, within one hundred twenty (120) days after receiving notice from Board of a potential infringement, or providing Board with notice of such infringement, to either (a) terminate such infringement or (b) institute an action to prevent continuation thereof including, but not limited to, cross-licensing agreements, marketing agreements, licensing agreements, and etc.; and, thereafter to prosecute such action diligently, or if Licensee notifies Board that it does not plan to terminate the infringement or institute such action, then Board shall have the right to do so at its own expense. Licensee's prosecution rights under Section 10.2 ("Licensee Prosecution Rights") will be subject to the continuing right of Board or University to intervene at Board's or University's own expense and join Licensee in any claim or suit for infringement or misappropriation of Licensed Patents or Licensed Technology. Any consideration

received in settlement of any claim or suit will be shared between University and Licensee in a proportionate amount to be determined at the time of intervention, based on royalties that would have been due if no infringement had occurred.

10.4 Board's Prosecution Rights

If Licensee fails to prosecute or remedy through agreement or settlement such infringement or misappropriation within six (6) months of notice of infringement or misappropriation, Board or University will have the right, but not the obligation, to prosecute such infringement or misappropriation at its own expense. Board will have the additional right, if Licensee fails to prosecute or remedy through agreement or settlement such infringement or misappropriation within said six (6) months, to (i) terminate any and all license rights granted to Licensee with respect to the Licensed Subject Matter being infringed or misappropriated, or (ii) convert the license rights granted to Licensee from exclusive to non-exclusive with respect to the Licensed Subject Matter being infringed or misappropriated. In the event Board exercises either of these options, Board may grant non-exclusive license rights to the infringer for said Licensed Subject Matter and/or any field(s) of use with Board or University retaining [**]% of all consideration for said license grant.

10.5 Cooperation between Board, University, and Licensee

In any action to enforce any of the Licensed Patents or Licensed Technology, either party to this Agreement, at the request and expense of the other party, will cooperate to the fullest extent reasonably possible. This provision will not be construed to require either party to undertake any activities, including legal discovery, at the request of any third party except as may be required by lawful process of a court of competent jurisdiction.

**11. Export Compliance**

Licensee understands that the Arms Export Control Act (AECA), including its implementing International Traffic In Arms Regulations (ITAR,) and the Export Administration Act (EAA), including its Export Administration Regulations (EAR), are some (but not all) of the laws and regulations that comprise the U.S. export laws and regulations. Licensee further understands that the U.S. export laws and regulations include (but are not limited to): (1) ITAR and EAR product/service/data-specific requirements; (2) ITAR and EAR ultimate destination-specific requirements; (3) ITAR and EAR end user-specific requirements; (4) ITAR and EAR end use- specific requirements; (5) Foreign Corrupt Practices Act; and (6) anti-boycott laws and regulations. Licensee will comply with all then-current applicable export laws and regulations of the U.S. Government (and other applicable U.S. laws and regulations) pertaining to the Licensed Technology (including any associated products, items, articles, computer software, media, services, technical data, and other information). Licensee certifies that it will not, directly or indirectly, export (including any deemed export), nor re-export (including any deemed re-export) the Licensed Technology (including any associated products, items, articles, computer software, media, services,

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

The University of Texas at Austin
Licensee: _____

UTA No.: _____

technical data, and other information) in violation of U.S. export laws and regulations or other applicable U.S. laws and regulations. Licensee will include an appropriate provision in its agreements with its authorized Sublicensees to assure that these parties comply with all then-current applicable U.S. export laws and regulations and other applicable U.S. laws and regulations

**12. Representations and Disclaimers**

12.1 Board Representation

Except for the rights, if any, of the Government of the United States, as set forth below, Board represents its belief that (i) it is the owner of the entire right, title, and interest in and to Licensed Subject Matter, (ii) it has the sole right to grant licenses to the Licensed Subject Matter, and (iii) it has not knowingly granted licenses to the Licensed Subject Matter to any other entity that would restrict rights granted to Licensee except as stated herein. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BOARD MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED.

12.2 Government Rights

Licensee understands that the Licensed Subject Matter may have been developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any agreement and any applicable law or regulation. If there is a conflict between an agreement, applicable law or regulation and this Agreement, the terms of the Government agreement, applicable law or regulation will prevail.

12.3 Board Disclaimers

Licensee understands and acknowledges that (i) Board, by this Agreement, makes no representation as to the operability or fitness for any use, safety, efficacy, ability to obtain regulatory approval, patentability, and/or breadth of the Licensed Subject Matter or as to whether there are any patents now held, or which will be held, by others or by Board in the Licensed Field, or as to whether the inventions contained in Licensed Patents do not infringe any other patents now held or that will be held by others or by Board, or as to whether Licensed Technology has been misappropriated; (ii) nothing in this Agreement will be construed as conferring by implication, estoppel or otherwise any license or rights to any patents or technology of Board other than the Licensed Subject Matter, whether such patents are dominant or subordinate to the Licensed Patents; and (iii) Board has no obligation to furnish to Licensee any technology or technological information other than the Licensed Technology.

12.4 Licensee Representations

By execution of this Agreement, Licensee acknowledges, covenants and agrees that it has not been induced in any way by Board, System, University or its employees to enter into this Agreement, and further warrants and represents that (i) it has conducted sufficient due diligence with respect to all items and issues pertaining to this Section 12 ("Representations and Disclaimers") and all other matters pertaining to this Agreement; and (ii) Licensee has adequate knowledge and expertise, or has utilized knowledgeable and expert consultants, to adequately conduct the due diligence, and agrees to accept all risks inherent herein. Licensee represents that it is a duly organized, validly existing C- Corporation in good standing under the laws of Delaware and has all necessary corporate power and authority to execute, deliver and perform its obligations hereunder.

**13. Limit of Liability**

IN NO EVENT WILL BOARD OR UNIVERSITY BE LIABLE FOR ANY DIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR EXPECTED SAVINGS OR OTHER ECONOMIC LOSSES, OR FOR INJURY TO PERSONS OR PROPERTY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER BOARD OR UNIVERSITY

KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. BOARD'S AND UNIVERSITY'S AGGREGATE LIABILITY FOR ALL DAMAGES OF ANY KIND RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE TO UNIVERSITY UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD PRECEDING THE DATE OF THE EVENT WHICH GAVE RISE TO THE LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS WILL APPLY TO ALL CLAIMS AND ACTIONS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR ANY OTHER GROUNDS.

**14. Indemnification**

Licensee agrees to hold harmless and indemnify Board, System, University, its Regents, officers, employees and agents (the "Indemnitees") from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, Affiliates, Sublicensees or their officers, employees, agents or representatives.

**15. Insurance**

15.1 Insurance Requirements

Beginning at the time any Licensed Subject Matter is being distributed or Sold (including for the purpose of obtaining any required regulatory approvals) by Licensee or a Sublicensee, Licensee will, at its sole cost and expense, procure and maintain commercial general liability insurance issued by an insurance carrier with an A.M. Best rating of "A" or better in amounts not less than $1,000,000 per incident and $1,000,000 annual aggregate. Licensee will use reasonable efforts to have the Indemnities named as additional insureds. All rights of subrogation will be waived against Board, University and its insurers. Such commercial general liability insurance will provide (i) product liability coverage; (ii) broad form contractual liability coverage for Licensee's indemnification under this Agreement; and (iii) coverage for litigation costs. The specified minimum insurance amounts will not constitute a limitation on Licensee's obligation to indemnify the Indemnitees under this Agreement.

15.2 Evidence of Insurance and Notice of Changes

Licensee will provide University with written evidence of such insurance upon request of University. Licensee will provide University with written notice of at least thirty (30) days prior to the cancellation, non-renewal or material change in such insurance.

15.3 Continuing Insurance Obligations

Licensee will maintain such commercial general liability insurance beyond the expiration or termination of this Agreement during (i) the period that any Licensed Subject Matter developed pursuant to this Agreement is being commercially distributed or Sold by Licensee, any Affiliate, or any Sublicensee or agent of Licensee; and (ii) for five (5) years after such period.

15.4 Additional Insurance

Board reserves the right to request additional policies of insurance where appropriate and reasonable in light of Licensee's business operations and availability of coverage.

**16. Assignment**

This Agreement may be assigned by Licensee without the prior written consent of Board. In the event this Agreement is so assigned, or in the event of any transfer by operation of law (e.g., a merger or reorganization or consolidation of Licensee), Licensee will pay a non-refundable fee of [**] ($[**]) if the total transaction value is more than [**] ($[**]).

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

**17. Governmental Markings**

17.1 Patent Marking

Licensee must permanently and legibly mark all products, where feasible, and documentation manufactured or Sold under this Agreement with patent notice appropriate under Title 35, United States Code.

17.2 Governmental Approvals and Marketing of Licensed Products

Licensee will be responsible for obtaining all necessary governmental approvals for the development, production, distribution, sale, and use of any Licensed Subject Matter, at Licensee's expense, including, without limitation, any safety studies. Licensee will have sole responsibility for any warning labels, packaging and instructions as to the use, and for the quality control for any Licensed Subject Matter.

17.3 Foreign Registration

Licensee agrees to register this Agreement with any foreign governmental agency that requires such registration and Licensee will pay all costs and legal fees in connection with such registration. Licensee will assure that all foreign laws affecting this Agreement or the sale of Licensed Subject Matter are fully satisfied.

**18. Use of Name**

18.1 By Licensee

Licensee may use the name "The University of Texas at Austin" in factually based materials related to the Licensed Subject Matter and the business of the Licensee; provided, however, that Licensee may not use the name of System, Board or University in connection with any name, brand or trademark related to Licensed Subject Matter. For example, Licensee may include a statement in promotional materials that refers to the fact that a product or service is based on technology developed at The University of Texas at Austin; Licensee may not include The University of Texas at Austin in a product or service name.

18.2 By Board or University

Board or University may use Licensee's name in connection with Board or University publicity related to University intellectual property and commercialization achievements.

**19. Notices**

Any notice or other communication of the parties required or permitted to be given or made under this Agreement will be in writing and be deemed effective when sent to the address set forth below (or as changed by written notice pursuant to this Section 19) by certified or registered mail, postage prepaid, return receipt requested or by internationally recognized overnight courier. Notices required under this Agreement may not be delivered via E-mail.

In the case of Board to:

The University of Texas at Austin
Licensee: _____

UTA No.: _____

Office of Technology Commercialization
The University of Texas at Austin
3925 West Braker Lane, Suite 1.9A
MCC Building, Mail Code: R3500
Austin, Texas 78759
Attn: Contract Manager
Fax: (512) 475-6894
Phone: (512) 471-2995

or in the case of Licensee to:

mailto:
AxoGen Corporation
PO Box 357787
Gainesville, FL 32635-7787

**20. General Provisions**

20.1 Binding Effect

This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns, and successors in interest.

20.2 Construction of Agreement

Headings are included for convenience only and will not be used to construe this Agreement. The parties acknowledge and agree that both parties substantially participated in negotiating the provisions of this Agreement; therefore, both parties agree that this Agreement shall not be construed more favorably toward one party than the other party, regardless of which party primarily drafted the Agreement.

20.3 Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20.4 Enforcement

In the event either party commences any proceeding against the other party with respect to this Agreement, the prevailing party (as determined by the authority before whom such proceeding is commenced) will be entitled to recover reasonable attorneys' fees and costs as may be incurred in connection therewith in addition to any such other relief as may be granted.

20.5 Compliance with Laws

Licensee will comply with all applicable federal, state and local laws and regulations, including, without limitation, all export laws and regulations.

20.6 E-mails

The parties acknowledge that they may correspond or convey documentation via Internet e-mail, but that no agreement between the parties will be entered into or notices provided via e-mail communications.

20.7 Governing Law

This Agreement will be construed and enforced in accordance with laws of the United States of America and the State of Texas, without regard to choice of law and conflicts of law principles.

20.8 Modification

Any modification of this Agreement will be effective only if it is in writing and signed by duly authorized representatives of both parties.

The University of Texas at Austin
Licensee: _____

UTA No.: _____

20.9 Severability

If any part of this Agreement is for any reason found to be unenforceable, invalid, or void, all other parts will remain enforceable.

20.10 Survival

The survival provisions of this Agreement are set forth in Section 8 ("Term and Termination").

20.11 Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to confer any benefits, rights or remedies on any Entity, other than the parties and their successors and permitted assigns.

20.12 Waiver

Neither party will be deemed to have waived any of its rights under this Agreement unless the waiver is in writing and signed by such party.

20.13 Entire Agreement

This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof, and supersedes all prior written or verbal agreements, representations and understandings relative to such matters.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

| ON BEHALF OF THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM | LICENSEE |
|---|---|
| By /s/ Juan M. Sanchez | By /s/ Jamie M. Grooms |
| Juan M. Sanchez, Ph.D.<br>Vice President for Research<br>The University of Texas at Austin | |
| Date July 22, 2005 | Date August 3, 2005 |

The University of Texas at Austin
Licensee: _____

UTA No.: _____

**EXHIBIT A: LICENSED PATENTS**

[**]

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

The University of Texas at Austin
Licensee: _____

UTA No.: _____

**EXHIBIT B: PROGRESS PLAN AND COMMERCIALIZATION REPORT**

**INSTRUCTIONS TO EXHIBIT B**
**PROGRESS REPORT AND COMMERCIALIZATION PLAN**

## I. General

Licensee shall annually submit a progress report ("Report") and commercialization plan ("Plan"), (collectively, the "Submissions") in the format outlined below to University beginning on the first anniversary of the Effective Date of this Agreement, as outlined in Section 2.4. The information provided in the Submissions is subject to audit by The University of Texas. The University of Texas may terminate its License with Licensee if any information provided in the Submissions is intentionally and materially misreported.

## A. Purpose

The information provided by Licensee in the Submissions is required by the License Agreement and also is critical to the technology commercialization process. By providing the information requested in this document, you can help us:

- track the progress and document the successes of the commercialization effort around the Licensed Subject Matter,
- promote research, development and commercialization and
- improve the technology licensing process at the University.

Licensee should provide as much information as is necessary to clearly demonstrate the commercialization of the Licensed Subject Matter. Failure to demonstrate commercialization of Licensed Subject Matter could result in termination of the License Agreement pursuant to Section 4.6 of License Agreement.

## B. Submissions Format

The following format must be followed for each required submission. Submissions that deviate substantially from these guidelines or that omit substantial information will not be considered submitted nor acceptable for the purpose of determining Licensee's compliance with License Agreement and its reporting requirements; provided, however, that unsatisfactory submissions shall be returned to Licensee with sufficient detail regarding the deviations which make the submission non-conforming so as to allow Licensee to resubmit a conforming submission prior to the declaration by Licensor of a Licensee default under the License Agreement.

1. *Page Limitations*. Page and paragraph limitations for the different parts of the Submissions are stipulated in the requirements section (below) and should be adhered to. If additional explanation is required, please attach typed explanation on 8 ½ x 11 inch pages using 1 inch margins. All additional pages should clearly indicate in the heading, the section and subsection (e.g., II.a.1, III.B, etc.) to which they relate and must follow all other Submissions format requirements.
2. *Tables Provided in Appendix C*. In order to simplify the Submissions review process, Excel tables are provided for Licensee to complete. Licensee must complete each table provided or indicate Not Applicable ("N/A"). (Note: Tables in Excel format may be modified to add additional rows or widen columns as necessary. For example, in Section II.B.4., a Licensed Product may have more than one current commercialization partner and thus another column should be added, however, if the Licensed Product does not have any current commercialization partners, no columns should be deleted. Simply indicate, "None".)

## C. General Instructions

1. Period

The Report must cover a one year period, ("Report Period") beginning on the anniversary of the Effective Date and ending on the day before the following anniversary of the Effective Date.

The Plan must cover a minimum of a three year period, ("Plan Period") beginning on the anniversary of the Effective Date and ending on the day before the second following anniversary of the Effective Date.

2. Due Date

Paper copies of the completed Submissions are due on the anniversary of the Effective Date, ("Due Date"), and each anniversary thereafter. Licensee is responsible for ensuring the Submissions are submitted by the Due Date. The Submissions will be deemed submitted on time if post-marked or received on or before the Due Date. It is recommended that Licensee send the completed Submissions via certified mail-return receipt requested (or via overnight delivery with signature requested). Submissions not submitted by the Due Date will be considered late and may result in breach and/or termination of License Agreement.

All Submissions should be sent to the following address:

Office of Technology Commercialization
The University of Texas at Austin
3925 W. Braker Lane
MCC Building Suite 1.9A
Austin, Texas 78759
Attention: Contract Manager

## II. Progress Report Requirements

Indicate all achievements and milestones made during the Report Period as outlined below including the completion of the tables in Appendix C. Attach all requested documentation and attach additional pages as necessary to the back of Appendix C.

Note: For each requirement, please include the efforts of each Sublicensee individually.

## A. Product Development

1. Development Activity

a) Dates of completion of a first commercial prototype for each Licensed Product.

b) Dates of completion of a manufacturing facility for each Licensed Product (if different). If a manufacturing facility is currently available, please indicate N/A.

c) Date of first commercial Sale of each Licensed Product.

d) Working capital invested during the Report Period (e.g., amount of non-contingent, operating capital to proceed with the exploration and development of the Licensed Subject Matter) for each Licensed Product for each stage completed and in progress.

2. Regulatory Approval Process Activity (if applicable, e.g. FDA approvals)

a) List stages of the approval process completed during the Report Period with corresponding completion dates for each Licensed Product requiring regulatory approval.

3. Intellectual Property Acquisition Activity

a) List any intellectual property (patent #s/patent app#) including inventor names that the company has licensed or developed in order to commercialize the Licensed Subject Matter.

4. Other Activity

a) List and describe any other achievements made during the Report Period with respect to Licensed Subject Matter or Licensed Products including relevant test result data and success metrics. Attach additional pages if necessary.

**B. Business Development**

1. Marketing and Sales Activity

a) Denote marketing Plan milestones achieved during the Report Period and other sales/marketing achievements.

b) List Sales of each Licensed Product containing Licensed Subject Matter during the Report Period.

c) List Licensed Fields that Licensee has or is in the process of commercializing, during the Report Period.

d) List and describe all current partnerships relevant to the commercialization of Licensed Subject Matter existing or formed during Report Period.

e) Provide any other marketing or sales accomplishments and materials attributable to Report Period (including press releases, product brochures, etc…).

2. Corporate Development Activity

a) List any funding events that occurred during report period (with updated Capitalization Table if Board, System or University received equity by the License Agreement).

b) Provide any other Corporate Development Activity during Report Period (including key hires or organizational changes, and acquisition, divestiture or other large transaction information).

**III. Commercialization Plan Requirements**

Indicate all commercialization plans, projections and timelines for Licensed Subject Matter applicable to the Plan Period including the completion of the tables in Appendix C. Attach all requested documentation and attach additional pages as necessary to the back of Appendix C.

Note: For each requirement, please include the efforts of each Sublicensee individually.

**A. Product Development**

Provide an updated product development plan outlining specific product development milestones and dates by which they will be achieved. Use the tables provided in Appendix C and be sure to reflect any changes and updates to the Plan from the previous Plan.

If the Company is also attaching a product development plan prepared for its own use, please denote all relevant sections of the plan which detail Licensed Products.

For all changes to the Plan from a prior Plan, please detail reasons for such changes. Attach additional pages, if necessary.

**B. Regulatory Approval (if applicable e.g. FDA approval)**

Provide an updated timeline with milestones for each stage of the required government regulatory approval process(es). Please use the tables provided in Appendix C and be sure to reflect any changes and updates to the Plan from the previous Plan.

For all changes to the timeline from a prior Plan, please detail reasons for such changes. Attach additional pages, if necessary.

**C. Business Development**

Provide an updated summary of Licensee's plans as to projected market(s), sales forecasts, manufacturing, operations and corporate developments.

The updated marketing plan shall include as a minimum, the following information: Analysis of target market(s) for each Licensed Product, including target market size, anticipated partnerships, estimated market share and product differentiation strategy (approximately 2-3 paragraphs).

If the Company is also attaching a marketing plan prepared for its own use, please denote all relevant sections of the plan which detail products and initiatives relating to Licensed Subject Matter.

For all changes to the Plan from a prior plan, please detail reasons for such changes. Attach additional pages, if necessary.

**FORM FOR PROGRESS REPORT AND COMMERCIALIZATION PLAN**

Licensee:

Name of Licensed Subject Matter:

Plan Period:

List of Licensed Products and Corresponding Fields of Use:

Company Representatives

Prepared By:

Approved By:

## I. Progress Report Requirements

Provide all required information and complete all relevant tables below or indicate "N/A" for not applicable

### A. Product Development

1. Provide Development Activity into tables provided below:

| Licensed product | a. Date Prototype Completion | b. Date manufacturing facility available | c. Date of first commercial sale | d. Working capital invested |
|---|---|---|---|---|
| | | | | |

2. Provide Regulatory Approval Process Activity, if applicable, into tables provided below:

Licensed Product_____

*{Regulatory Agency}*

| Approval Stage or Phase | Completion Date |
|---|---|
| | |

Licensed Product_____

*{Regulatory Agency}*

| Approval Stage or Phase | Completion Date |
|---|---|
| | |

3. Provide Intellectual Property Acquisition Activity into the table provided below:

| Patent no./Patent app. no. | Inventor name(s) | Title(s) |
|---|---|---|

4. Provide Other Activity below and attached as necessary:

**B. Business Development**

1. Provide Marketing and Sales Activity in the tables and space below:

a) Marketing Plan Milestones Achieved

| Marketing Plan Milestone | Date Achieved |
|---|---|

b) Sales of each Licensed Product

| Licensed product name | Sales |
|---|---|

c) Fields of Use pursued

| Fields of use | Yes/No |
|---|---|

d) Commercialization Partnerships

| Licensed product | Current or Anticipated | Nature of Relationship |
|---|---|---|

e) Provide other sales or marketing activity below and attached as necessary (including press releases and marketing collateral):

2. Provide Corporate Development Activity in the tables and space below:

a) Funding Events (attach updated Capitalization Table if applicable)

| Date | Investors | Funding Amount |
|---|---|---|

b) Provide other corporate development activity below and attached as necessary.

## II. Commercialization Plan Requirements

Provide all required information and complete all relevant tables below or indicate "N/A" for not applicable.

### A. Product Development.

Provide 2-3 paragraphs describing the product development plan for each Licensed Product in development during Plan Period.

| Licensed product | Date of Prototype Completion | Date manufacturing facility available | Date of first commercial sale | Anticipated Capital Investment |
|---|---|---|---|---|

### B. Regulatory Approval.

Provide an updated projection of milestones with regard to Regulatory Approvals. If this Plan represents a change from the previous Plan, please provide the reasons:

| {Regulatory Agency Stage or Phase} | Key personnel assigned | Estimated start time | Estimated end time | Estimated cost to complete |
|---|---|---|---|---|

**C. Business Development**

Provide 2-3 paragraphs describing the business development plan for each Licensed Product to be marketed during Plan Period.:

Please enter changes in the following table:

| Licensed product | Year of expected first sale | Revenue forecast | | | | |
|---|---|---|---|---|---|---|
| | | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** |

Please enter changes in the following table:

| Licensed product | Current partner | Anticipated partner |
|---|---|---|

Please enter changes in the following table:

| Fields of use | Yes/No |
|---|---|

The University of Texas at Austin
Licensee: _____

UTA No.: _____

## EXHIBIT C: FORM OF SALES AND ROYALTY REPORT

**INSTRUCTIONS TO EXHIBIT C**

Licensee: UT Agreement No:_____

Period Covered: From: / / through: / /

Prepared by: (company representative) Date:

Approved by: (company representative) Date:

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

Report Type: ☐ Single Product or Process Line Report:_____
(product name)

☐ Multiproduct Summary Report, page 1 of _____ pages

Other Compensation: ☐ Annual payments, milestones, other fees & compensation:_____
Amount due:_____

☐ No Compensation or Royalty Due this Period
Reason why:_____

| Country | Quantity Produced | Quantity Sold | Gross Sales ($) | *Net Sales ($) | Royalty Rate | Conversion Rate (if applies) | Royalty Due This Period |
|---|---|---|---|---|---|---|---|
| USA | | | | | | | |
| Canada | | | | | | | |
| Japan | | | | | | | |
| Other: | | | | | | | |
| Sublicensee # 1 | | | | | | | |
| Name | | | | | | | |
| Sublicensee # 2 | | | | | | | |
| name | | | | | | | |
| TOTAL: | | | | | | | |

* To calculate Net Sales, use the following space to list separately the specific types of allowed deductions under our agreement and the corresponding amount

_____

Then calculate the final Net Sales amount by subtracting these deductions from Gross Sales, and note in the column above

The University of Texas at Austin
Licensee: _____

UTA No.: _____

**EXHIBIT 10.2**

**CONFIDENTIAL TREATMENT REQUESTED UNDER 17 C.F.R. §§ 200.80(B)(4) AND 230.406. THE CONFIDENTIAL PORTIONS OF THIS EXHIBIT HAVE BEEN OMITTED AND ARE MARKED ACCORDINGLY. THE CONFIDENTIAL PORTIONS HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A CONFIDENTIAL TREATMENT REQUEST.**

Agreement No. _____

# AMENDED AND RESTATED STANDARD EXCLUSIVE LICENSE AGREEMENT WITH SUBLICENSING TERMS

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This Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms (this "Agreement") is made and entered into as of February 21, 2006 (the "Amended Agreement Date"), by and between the University of Florida Research Foundation, Inc. (hereinafter called "UFRF"), a nonstock, nonprofit Florida corporation, and Axogen Corporation (hereinafter called "Licensee"), a corporation organized and existing under the laws of Florida. This Agreement amends and restates that certain Standard License Agreement with Sublicensing Terms between UFRF and Licensee dated June 5, 2003. The Effective Date of the Agreement, as amended and restated here, remains June 5, 2003.

WHEREAS, UFRF owns certain inventions that are described in the "Licensed Patents" defined below, and UFRF is willing to grant a license to Licensee under all of the Licensed Patents and Licensee desires a license under all of them;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

**Section 1 Definitions**

1.1 "Licensed Patents" shall refer to and mean all of the following UFRF intellectual property:

1.1.1 [**];

1.1.2 [**];

1.1.3 [**];

1.1.4 all foreign counterparts, and divisionals and continuations both U.S. and foreign, of the patent applications described in Sections 1.1.1, 1.1.2, and 1.1.3 all to the extent owned or controlled by the University of Florida; and

1.1.5 any reissues or re-examinations of the patents described in Sections 1.1.1, 1.1.2, and 1.1.3.

1.2 "Licensed Product" and "Licensed Process" shall mean:

1.2.1 In the case of a Licensed Product, any product or part thereof developed by or on behalf of Licensee that:

(a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents, of a particular country in which any product is made, used or sold; or

(b) is manufactured by using a process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents, of a particular country in which any such process is used or in which any such product is used or sold; or

(c) employs or was discovered by Licensee employing Licensed Know-How anywhere in the world.

1.2.2 In the case of a Licensed Process, any process that:

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

(a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents of a particular country in which such process is practiced; or

(b) employs or was discovered by Licensee employing Licensed Know-How anywhere in the world.

1.3 "Improvements" shall mean any modification of an invention described in the Licensed Patents which, if unlicensed, would infringe one or more claims of the Licensed Patents.

1.4 "Investigator" shall mean Dr. David Muir, during his employment with the University of Florida.

1.5 Know-How means all technology and information disclosed to Licensee known to Investigator relating to the practice of the Patents but not disclosed in the Patents, including but not limited to, information, techniques, biological materials, methods of manufacture, methods of use, and the like, which are not made public by UFRF. Nothing herein withstanding, University of Florida shall have the right to use biological materials for research purposes and to meet all federal and Florida state requirements governing the availability and transfer of biological materials.

1.6 "Licensed Know-How" shall mean the Know-How that UFRF makes available to Licensee pursuant to the terms of this Agreement.

1.7 "Net Sales" shall mean the amount collected on sales of Licensed Product and/or Licensed Processes after deducting, if not already deducted in the amount invoiced:

- Trade and/or quantity discounts
- Credits on returns and allowances
- Outbound transportation and insurance costs paid
- Applicable Sales Taxes paid to Licensee

1.8 The term "Affiliate" shall mean: (a) any person or entity which controls at least fifty percent (50%) of the equity or voting stock of the Licensee or (b) any person or entity fifty percent (50%) of whose equity or voting stock is owned or controlled by the Licensee or (c) any person or entity of which at least fifty percent (50%) of the equity or voting stock is owned or controlled by the same person or entity owning or controlling at least fifty percent (50%) of Licensee.

1.9 The term "Sublicensee" shall mean any third party to whom Licensee confers the right to make, use or sell Licensed Product and/or Licensed Processes.

1.10 "Development Plan" shall mean a written report summarizing the development activities that are to be undertaken by the Licensee to bring Licensed Products and/or Licensed Processes to the market. The Development Plan is attached as Appendix A.

1.11 "Development Report" shall mean a written account of Licensee's progress under the Development Plan having at least the information specified on Appendix B to this Agreement, and shall be sent to the address specified on Appendix B.

1.12 "Licensed Field" shall be limited to the field of medical devices, human therapeutics and human and animal tissue.

1.13 “Licensed Territory” shall be worldwide

1.14 “Services” shall mean professional services specifically required to bring Licensed Products and Licensed Processes to market.

1.15 “Valid Claim” shall mean, with respect to a particular country, a claim of an issued patent or a pending patent application that (a) has not lapsed or become abandoned, disclaimed, denied, revoked, or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise in such country and (b) has not been declared invalid or unenforceable by a court of competent jurisdiction or an administrative agency for which there is no further right of appeal or for which the right of appeal is waived.

**Section 2 Grant**

2.1 License.

UFRF hereby grants to Licensee:

(a) an exclusive license, limited to the Licensed Field and the Licensed Territory, under the Licensed Patents to make, have made, use and sell, offer to sell, have sold and import Licensed Products and/or Licensed Processes;

(b) a non-exclusive license, limited to the Licensed Field and the Licensed Territory under the Licensed Know-How to make, have made, use and sell, offer to sell, have sold and import Licensed Products and/or Licensed Processes.

UFRF reserves to itself and the University of Florida the right, solely for research (including research funded by any commercial sponsors), clinical and educational purposes, to make, and use Licensed Products and/or Licensed Processes, as well as products and/or processes covered in whole or in part by any claims of any Improvements.

2.2 Sublicense.

2.2.1 Licensee may grant written, exclusive or nonexclusive Sublicenses to third parties. Any agreement granting a Sublicense shall state that the Sublicense is subject to the termination of this Agreement. Licensee or Affiliates shall have the same responsibility for the activities of any Sublicensee as if the activities were directly those of Licensee. Licensee shall provide a copy of all sublicense agreements to UFRF within thirty (30) days of the effective date of said agreements. UFRF shall maintain the confidentiality of such agreements.

2.2.2 In respect to Sublicenses granted by Licensee under 2.2.1 above, Licensee shall pay to UFRF an amount equal to what Licensee would have been required to pay to UFRF had Licensee sold the amount of Licensed Products sold by such Sublicensee.

2.2.3 Licensee shall not receive from Sublicensees anything of value in lieu of cash payments in consideration for any Sublicense under this Agreement without the express prior written permission of UFRF. If Licensee receives any fees, minimum royalties, or other payments in consideration for any rights granted under a Sublicense, and such payments

are not based directly upon the amount or value of Licensed Products sold by the Sublicensee, then Licensee shall pay UFRF a portion of such payments according to the following schedule in the manner specified in Section 4.5.

| If Sublicense of a pharmaceutical: | Portion of payment due to UFRF: |
|---|---|
| Any time before Phase I FDA clinical trials are completed | [**]% |
| After Phase I FDA clinical trials but before completion of Phase II trials | [**]% |
| After completion of Phase II trials but before end of Phase III trials | [**]% |
| After completion of Phase III trials | [**]% |

**Section 3 Due Diligence**

3.1 Development.

3.1.1 Licensee agrees to and warrants the following:

(a) it has, or will obtain, the expertise necessary to independently evaluate the inventions of the Licensed Patents;

(b) it will establish and actively and diligently pursue the Development Plan (see Appendix A ) to the end that the inventions of the Licensed Patents will be utilized to provide Licensed Products and/or Licensed Processes for sale in the retail market within the Licensed Field; and

(c) until the date of first commercial sale of Licensed Products, it will supply UFRF with a written Development Report annually fifteen (15) days after the end of the calendar year (see Appendix B ).

All development activities and strategies and all aspects of product design and decisions to market and the like are entirely at the discretion of Licensee, and Licensee shall rely entirely on its own expertise with respect thereto. UFRF's review of Licensee's Development Plan is solely to verify the existence of Licensee's commitment to development activity and to ensure compliance with Licensee's obligations to use commercially reasonable efforts to commercialize the inventions of the Licensed Patents, as set forth above, other than those elements of the Development Plan as designated as Due Diligence milestones in Section 3.1.3.

3.1.2 Jamie Grooms will act as Chief Executive Officer of Licensee as of the Effective Date of this Agreement and will remain as such until replaced by the Licensee's Board of Directors.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

3.1.3 Licensee agrees to use commercially reasonable efforts to achieve the milestones described in (a)-(i) of this Section 3.1.3 (to the extent applicable to the Licensed Products and Licensed Processes to be developed under this Agreement) by the target dates specified in (a)-(i) below:

(a) First commercial sale of a Licensed Product to a retail customer on or before the date thirty-six (36) months from March 1, 2006;

(b) Establish facilities or enter a contract for outsourced facilities for processing tissue for transplantation and apply to the United States Food and Drug Administration ("FDA") (or applicable governing body) for approval, if required, to use such facilities for said process, on or before August 1, 2008;

(c) If any Licensed Products or Licensed Processes are classified as a drug or biologic by the FDA, complete preclinical trials required to initiate Phase I FDA clinical trials for at least one Licensed Product or Licensed Process which is classified as a therapeutic by FDA, on or before the date fifteen (15) months from [**];

(d) If any Licensed Products or Licensed Processes are classified as a drug or biologic by the FDA, initiate Phase I clinical trials for at least one Licensed Product or Licensed Process which is classified as a therapeutic by FDA, on or before the date twelve (12) months from the date on which milestone 3.1.3(c) is achieved;

(e) If any Licensed Products or Licensed Processes are classified as a drug or biologic by the FDA, initiate Phase II clinical trials for at least one Licensed Product or Licensed Process which is classified as a therapeutic by FDA, on or before the date twenty-four (24) months from the date on which milestone 3.1.3(d) is achieved;

(f) If any Licensed Products or Licensed Processes are classified as a drug or biologic by the FDA, initiate Phase III clinical trials for at least one Licensed Product or Licensed Process which is classified as a therapeutic by FDA, on or before the date thirty (30) months from the date on which milestone 3.1.3(e) is achieved;

(g) If any Licensed Products or Licensed Processes are classified as a drug or biologic by the FDA, file New Drug Application with FDA within eighteen (18) months of completing Phase III clinical trials;

(h) If any Licensed Products or Licensed Processes are classified as a medical device by the FDA, file initial application required to begin the process to obtain FDA approval for at least one Licensed Product or Licensed Process which is classified by FDA as a medical device, on or before the date fifteen (15) months from [**]; and

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

(i) If any Licensed Products or Licensed Processes are classified as a medical device by the FDA, file subsequent application required to obtain FDA approval for at least one Licensed Product or Licensed Process which is classified by FDA as a medical device, on or before the date twenty-four (24) months from the date on which milestone 3.1.3(h) is achieved.

The parties recognize that one or more of the target dates may not be achieved despite Licensee's commercially reasonable efforts, because of scientific or technical difficulties in the product development or manufacturing process, or because the regulatory approval process involves many factors beyond Licensee's reasonable control. If a relevant milestone is not achieved by the specified target date, UFRF may, in its discretion, request a review (the "Review") by written notice to Licensee. Within thirty (30) days of its receipt of such request (or such other period as the parties shall mutually agree upon), Licensee shall make a formal presentation to UFRF as to the cause of the delay and the extent of its diligence in moving toward achieving the milestone in question. Should Licensee, despite commercially reasonable efforts, fail to achieve a relevant milestone by the applicable target date,the parties shall meet to discuss and agree on an extension to the relevant target date(s) appropriate under the circumstances, such agreement not to be unreasonably withheld.

If UFRF believes that the failure to achieve the milestone in question was due solely to Licensee's lack of commercially reasonable efforts, UFRF can commence the process to terminate this Agreement in accordance with Section 9.3 below.

3.1.4 Licensee shall have the right, with 120 days written notice to UFRF, to delete specific fields of use from Licensed Fields. Licensee will no longer be required to achieve Milestones in those fields and UFRF shall have the right to exclusively license those fields of use to other parties.

**Section 4 Compensation**

4.1 License Issue Fee.

Licensee paid to UFRF a License Issue Fee of [**] ($[**]) within thirty (30) days of the Effective Date, [**]% of which will be credited against future royalty payments, lessening such payments by a total of $[**].

4.2 Issuance of Equity

As further consideration for the rights granted to Licensee by this Agreement, Licensee issued to UFRF 500,000 shares of common stock of Licensee.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

The issuance of common stock to UFRF under this Section 4.2 is made in accordance with that certain Amended and Restated Shareholders and Registration Rights Agreement by and between UFRF, Licensee and the other parties to such agreement of even date herewith, a copy of which is attached hereto as Appendix D and incorporated by reference herein.

4.3 Running Royalty; Option.

4.3.1 Licensee agrees to pay to UFRF a royalty, on a country by country basis, on Net Sales of Licensed Products and/or Licensed Processes that, but for the license granted under this Agreement, would infringe one or more Valid Claims of Licensed Patents in such country, as follows: in countries where the sale of a Licensed Product or Licensed Process would infringe one or more Valid Claims of Licensed Patents but for this Agreement, Licensee agrees to pay a royalty in an amount equal to [**] percent ([**]%) of Net Sales of such Licensed Product or Licensed Process in such country by Licensee, its Affiliates, or its Sublicenses.

Subject to third party contractual obligations, Licensee shall have, during the term of this Agreement, beginning on the Amended Agreement Date, a first look at, and option to as stated below, any invention, technology, product, or process from the laboratory of [**] within the Licensed Field and a royalty-free license to all non-patentable inventions. The UFRF Office of Technology Licensing shall promptly disclose to Licensee any and all such inventions, technology, products and processes, together with data and information sufficient for Licensee to assess them. Licensee's "first look" at any such invention, technology, product or process shall be for a period of twenty (20) days from the date of such disclosure, which shall allow the Licensee to decide if it wants to take an exclusive option, for an additional ninety (90) day period, to complete due diligence and determine its interest in licensing such invention, technology, product or process. If during the twenty (20) day "first look" period Licensee decides to exercise its right to the ninety (90) day option, it shall notify UFRF in writing. If during the ninety (90) day option period Licensee decides to exercise its option and take an exclusive license to the invention, technology, product or process, it shall notify UFRF in writing, and the two parties shall promptly and cooperatively work together to finalize and execute the license agreement, within such ninety (90) day period or as soon as reasonably possible thereafter. Such license agreement shall be in substantially the same form as this Agreement, modified as appropriate.

In subsequent license agreements pursuant to this Section 4.3.1., the Licensee shall have: (a) the right to make, have made, use, import, offer to sell, sell and have sold the licensed invention, technology, product or process, and (b) the right to sublicense for purposes of developing, manufacturing or selling the product or process based thereon. UFRF agrees that royalties for such new licenses will be non-cumulative of terms contained in this amended license (that is, royalty rates under the new license agreements will not be added to royalty rates due under this Agreement), where the new inventions, technologies, products and processes are (i) patentable only in combination with the Licensed Product or Licensed Process under this Agreement, or (ii) the Licensed Product

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

or Licensed Process could not have been sold in the marketplace but for the improvement specified in the new invention, technology, product or process, or (iii) the improvement specified in the new invention, technology, product or process could not have been sold in the marketplace but for the Licensed Product or Licensed Process. However, where such new license agreements include any new invention, technology, product or process that is patentable independently of the Licensed Patents under this agreement and is (a) sold as a stand alone product or (b) replaces the Licensed Product or Licensed Process rather than being sold in conjunction therewith, then Licensee shall pay royalties on net sales of such separate product or process independent of whatever royalties may be due on net sales of Licensed Products and Licensed Processes under this Agreement. It is further contemplated that issuance of equity, if any, for such new license agreements shall in no circumstance exceed 15,000 shares of Licensee's common stock.

4.3.2 Licensee agrees to pay to UFRF a royalty, on a country by country basis, on Net Sales of Licensed Products and/or Licensed Processes that do not infringe any Valid Claims of Licensed Patents in such country, in an amount equal to [**] percent ([**]%) of Net Sales of such Licensed Product or Licensed Process in such country by Licensee, its Affiliates, or its Sublicensees, as long as the Licensed Products and/or Licensed Processes are covered by an issued, and unexpired claim valid in the United States and contained in the Licensed Patents.

4.3.3 If Licensee must pay royalties under licenses for rights from third parties in order to make, use, or sell Licensed Products or Licensed Processes that, but for the license granted in this Agreement, would infringe one or more Valid Claims of Licensed Patents, the royalty due to UFRF on Net Sales of such products shall be reduced [**] ($[**]) for each [**] ($[**]) Licensee is obligated to pay said third party. In no case shall the royalty due to UFRF on Net Sales of Licensed Products and/or Licensed Processes that, but for the license granted in this Agreement, would infringe one or more Valid Claims of Licensed Patents be less than [**] percent ([**]%) unless otherwise specified in this agreement.

4.3.4 Commencing five (5) years from the Effective Date, Licensee shall pay UFRF an amount equal to the greater of (i) the actual royalty payable to UFRF by Licensee pursuant to Sections 4.3.1, 4.3.2 and 4.3.3 and (ii) an amount equal to the following quarterly payments (the "Minimum Royalty"):

| Quarterly Payment | Year |
|---|---|
| $ [**] | Five Years from Effective Date |
| $ [**] | Six Years from Effective Date and every calendar quarter thereafter on the same date, for the remainder of the term of this Agreement. |

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

Licensee shall receive a credit towards subsequent or previous quarterly Minimum Royalty payments in such calendar year for any amounts paid in excess of the Minimum Royalty during such calendar year.

Any Minimum Royalty paid in a calendar year will be credited against the earned royalties for that calendar year. It is understood that the Minimum Royalties will be applied to earned royalties on a calendar year basis, and that sales of Licensed Products and/or Licensed Processes requiring the payment of earned royalties made during a prior or subsequent calendar year shall have no effect on the annual Minimum Royalty due UFRF for other than the same calendar year in which the royalties were earned. However, Licensee's credit for [**] percent ([**]%) of Actual Milestone Payments (paid pursuant to Section 4.4) shall be credited in multiple calendar years if applicable.

An example of how this Section 4.3.3 may affect Licensee's payments to UFRF is set forth in the chart below:

| Quarter | Actual Earned Royalty | Minimum Royalty | Credit Received (Applied) | Royalty Amount Paid to UFRF |
|---|---|---|---|---|
| 3/31/08 | $[**] | $[**] | $[**] | $[**] |
| 6/30/08 | $[**] | $[**] | [**] | $[**] |
| 9/30/08 | $[**] | $[**] | $[**] | $[**] |
| 12/31/08 | $[**] | $[**] | $[**] | $[**] |

4.4 Other Payments.

4.4.1 In addition to all other payments required under this Agreement, Licensee agrees to pay UFRF Milestone Payments thirty (30) days after the events in the table below as follows:

Milestone Payments for Licensed Products classified by FDA as Pharmaceuticals:

| Payment | Event |
|---|---|
| $[**] | Initiation of Phase II FDA clinical trials |
| $[**] | Initiation of Phase III FDA clinical trials |
| $[**] | FDA Approval |

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

Milestone Payments for Licensed Products classified by FDA as Devices:

| Payment | Event |
|---|---|
| $[**] | FDA Premarket Approval (PMA) |
| $[**] | FDA Approval |

In addition, [**] percent ([**]%) of Actual Milestone Payments shall be creditable against earned royalties. Notwithstanding the foregoing Milestone Payments, the Actual Milestone Payments which Licensee shall be obligated to pay to UFRF shall be adjusted based on the proportion of (i) funding invested in Licensee by its founders, officers, directors, employees, advisors, their immediate family members and entities owned or controlled by such individuals (collectively, the "Internal Funding") and (ii) the funding invested in Licensee by Internal Funding and all other sources (collectively, the "Total Funding"), as follows:

$$\text{Actual Milestone Payment} = \text{Milestone Payment} \times \frac{\text{Internal Funding}}{\text{Total Funding}}$$

For example, if the Internal Funding equals $**, the Total Funding equals $** and the applicable Milestone Payment is $**, then the Actual Milestone Payment payable by Licensee is $**. Up to $** of this Actual Milestone Payment may be used as a credit, such that if royalty payments of $** were owed, for instance, two quarters after the Actual Milestone of $** was paid, then those royalty payments would be reduced to $**. Similarly, if this Actual Milestone payment occurred after royalties had already been paid of say, $**, then this credit would lessen the Actual Milestone payment to $**.

If Licensee sublicenses the rights to make, use, or sell Licensed Products or Licensed Processes and such sublicensee(s) achieve milestones that trigger Milestone Payments by Licensee, then the Actual Milestone Payments shall equal the Milestone Payments for the Licensed Products or Licensed Processes that have been sublicensed, that would have otherwise been payable as if Licensee achieved such milestone itself.

4.5 Accounting for Payments.

4.5.1 Amounts owing to UFRF under Sections 2.2 and 4.3 shall be paid on a quarterly basis, with such amounts due and received by UFRF on or before the thirtieth day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts were earned.

4.5.2 The balance of any amounts which remain unpaid more than thirty (30) days after they are due to UFRF shall accrue interest until paid at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays. Licensee shall also be responsible for repayment to UFRF of any attorney, collection agency, or other out-of-pocket UFRF expenses required to collect overdue payments due from this Section 4.5.2, Section 6.2 or any other applicable section of this Agreement.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

4.5.3 Except as otherwise directed, all amounts owing to UFRF under this Agreement shall be paid in U.S. dollars to UFRF at the address provided in Section 15.1. All royalties owing with respect to Net Sales stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation—Value of Foreign Currencies on the day preceding the payment.

4.5.4 A certified full accounting statement showing how any amounts payable to UFRF under Sections 2.2 and 4.3 have been calculated shall be submitted to UFRF on the date of each such payment. Such accounting shall be on a per-country and per-Product basis and shall be summarized on the form shown in Appendix C of this Agreement. UFRF shall maintain the confidentiality of such information. In the event no payment is owed to UFRF an accounting demonstrating that fact shall be supplied to UFRF.

4.5.5 All payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on UFRF by any government outside of the United States or any political subdivision of such government with respect to any amounts payable to UFRF pursuant to this Agreement. All such taxes, assessments, or other charges shall be assumed by Licensee.

**Section 5 Certain Warranties and Disclaimers of UFRF**

5.1 UFRF warrants that, except as otherwise provided under Section 17.1 of this Agreement with respect to U.S. Government interests, it is the owner of the Licensed Patents or otherwise has the right to grant the licenses granted to Licensee in this Agreement. However, nothing in this Agreement shall be construed as:

5.1.1 a warranty or representation by UFRF as to the validity or scope of any right included in the Licensed Patents;

5.1.2 a warranty that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties;

5.1.3 an obligation to bring or prosecute actions or suits against third parties for infringement of Licensed Patents;

5.1.4 an obligation to furnish any know-how not provided in Licensed Patents or any services other than those specified in this Agreement; or

5.1.5 a warranty or representation by UFRF that it will not grant licenses to others to make, use or sell products not covered by the claims of the Licensed Patents which may be similar and/or compete with products made or sold by Licensee.

5.1.6 UFRF warrants that it is exempt from paying income taxes under U.S. law.

5.2 UFRF shall not grant licenses to others to make, use or sell products covered by the claims of the Licensed Patents.

5.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, UFRF MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING. UFRF ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY LICENSEE, ITS SUBLICENSEE(S), OR THEIR VENDEES OR OTHER TRANSFEREES OF PRODUCT INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED UNDER THIS AGREEMENT.

**Section 6 Record keeping**

6.1 Licensee and its Sublicensee(s) shall keep books and records sufficient to verify the accuracy and completeness of Licensee's and its Sublicensee(s)'s accounting referred to above, including without limitation inventory, purchase and invoice records sales analysis, and tax returns relating to the Licensed Products and/or Licensed Processes. Such books and records shall be preserved for a period not less than six years after they are created, both during and after the term of this Agreement.

6.2 Licensee and its Sublicensee(s) shall take all steps necessary so that UFRF may, within thirty (30) days of its written request, audit, review and/or copy all of the books and records sufficient to verify the accuracy and completeness of Licensee's and its Sublicensee(s)'s accounting referred to above, at a single U.S. location to verify the accuracy of Licensee's and its Sublicensee(s)'s accounting. Such review may be performed by any authorized employees of UFRF as well as by any attorneys and/or accountants designated by UFRF, upon reasonable notice and during regular business hours. UFRF shall maintain the confidentiality of such books and records.

6.3 If a deficiency with regard to any payment hereunder is determined, Licensee and its Sublicensee(s) shall pay the deficiency within thirty (30) days of receiving notice thereof along with applicable interest as described in Section 4.5.2. If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that year, then Licensee and its Sublicensee(s) shall be responsible for paying UFRF's out-of-pocket expenses incurred with respect to such review.

6.4 At any time during the term of this Agreement, UFRF may request in writing that Licensee verify the calculation of any past payments owed to UFRF through the means of a self-audit. Within ninety (90) days of the request, Licensee shall complete a self-audit of its books and records to verify the accuracy and completeness of the payments owed. Within thirty (30) days of the completion of the self-audit, Licensee shall submit to UFRF a report detailing the findings of the self-audit and the manner in which it was conducted in order to verify the accuracy and completeness of the payments owed. If Licensee has determined through its self-audit that there is any payment deficiency, Licensee shall pay UFRF the deficiency along with applicable interest under Section 4.5.2. with the submission of the self-audit report to UFRF. If Licensee has determined through its self-audit that there is not any payment deficiency, UFRF shall not have the right to request another self-audit for twelve calendar months.

**Section 7 Patent Prosecution**

7.1 UFRF shall diligently prosecute and maintain the Licensed Patents using counsel selected by UFRF and reasonably acceptable to Licensee. UFRF shall provide Licensee with copies of all patent applications amendments, and other filings with the United States Patent and Trademark Office and foreign patent offices. UFRF will also provide Licensee with copies of office actions and other communications received by UFRF from the United States Patent and Trademark Office and foreign patent offices relating to Licensed Patents. Licensee agrees to keep such information confidential.

7.2 Licensee shall be responsible for and pay all future costs and expenses incurred by UFRF for the preparation, filing, prosecution, issuance, and maintenance of the Licensed Patents within thirty (30) days of receipt of an invoice from UFRF. Licensee shall be responsible for and pay all past costs and expenses incurred and invoiced by UFRF for the preparation, filing, prosecution, issuance, and maintenance of the Licensed Patents within ninety days (90) of the execution of this amended License Agreement. It shall be the responsibility of Licensee to keep UFRF fully apprised of the "small entity" status of Licensee with respect to the U.S. patent laws and with respect to the patent laws of any other countries, if applicable, and to inform UFRF of any changes in such status, within thirty days of any such change.

7.3 UFRF will provide Licensee with prior written notice in the event that UFRF elects not to prosecute and/or maintain a patent application or patent included in the Licensed Patents in any country and, upon such election, Licensee shall have the right to prosecute such patent application or patent in such country or countries (and any additional countries it may choose) at its own discretion and expense. UFRF shall provide Licensee with ninety (90) days prior written notice of its decision, and such notice shall be given no later than ninety (90) days prior to a non-extendable deadline for prosecution or maintenance of such patent application or patent in such country.

7.4 Licensee will provide UFRF with prior written notice in the event that Licensee elects not to pay UFRF for the costs of a patent application or patent included in the Licensed Patents in any country and, upon such election, UFRF shall have the right to prosecute such patent application or patent in such country or countries at its own discretion and expense. With sixty (60) days written notice to Licensee, UFRF shall have the right to license such patent application or patent in such country or countries if patent costs remain nonreimbursed. Licensee shall provide UFRF with ninety (45) days prior written notice of its decision, and such notice shall be given no later than ninety (45) days prior to a non-extendable deadline for prosecution or maintenance of such patent application or patent in such country. Licensee shall have no rights in such patents in such country or countries upon the receipt of such written notice by UFRF, provided that UFRF will provide Licensee sixty days notice of its intention to License such patents in such countries.

**Section 8 Infringement and Invalidity**

8.1 Licensee shall inform UFRF promptly in writing of any alleged infringement of the Licensed Patents or Licensed Processes by a third party and of any available evidence thereof. UFRF shall inform Licensee promptly in writing of any alleged infringement of the Licensed Patents or Licensed Processes by a third party and of any available evidence thereof.

8.2 Licensee shall have the first right, but shall not be obligated, to prosecute at its own expense any such infringements of the Licensed Patents. If Licensee shall fail, within one hundred twenty (120) days after receiving notice from UFRF of a potential infringement, or providing UFRF with notice of such infringement, to either (a) terminate such infringement or (b) institute an action to prevent continuation thereof including, but not limited to, cross-licensing agreements, marketing agreements, licensing agreements, litigation, etc.; and, thereafter to prosecute such action diligently, or if Licensee notifies UFRF that it does not plan to terminate the infringement or institute such action, then UFRF shall have the right, but shall not be obligated, to prosecute at its own expense any such infringements of the Licensed Patents. If either party prosecutes any such infringement, both parties agree that the prosecuting party may include the other party as a co-plaintiff in any such suit, without expense to such other party (except as provided in Section 8.5).

8.3 No settlement, consent judgment or other voluntary final disposition of the infringement suit may be entered into without the written consent of UFRF and Licensee, which consent shall not unreasonably withheld.

8.4 In the event that either UFRF or Licensee shall undertake the enforcement by litigation and/or defense of the Licensed Patents by litigation, any recovery of damages by UFRF and/or Licensee for any such suit shall be applied (a) first in satisfaction of any unreimbursed expenses and legal fees of the party prosecuting such infringement in accordance with Sections 8.2 relating to the suit, (b) second in satisfaction of the other party's unreimbursed expenses and legal fees and (c) the balance remaining from any such recovery, if any, shall be divided as follows**:** [**]**.**

8.5 In any infringement suit that either party may institute to enforce the Licensed Patents pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

8.6 In the event a declaratory judgment action alleging invalidity or noninfringement of any of the Licensed Patents shall be brought against Licensee, UFRF, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

8.7 In the event Licensee contests the validity of any Licensed Patents, Licensee shall continue to pay royalties and make other payments pursuant to this Agreement with respect to that patent as if such contest were not underway until the patent is adjudicated invalid or unenforceable by a court.

**Section 9 Term and Termination**

9.1 The term of this license shall begin on the Effective Date and continue until the earlier of the date that no Licensed Patent remains an enforceable patent or the payment of earned royalties under Section 4.3, once begun, ceases for more than four (4) calendar quarters on all Licensed Products and Processes.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

9.2 Licensee may terminate this Agreement at any time by giving at least sixty (60) days written notice of such termination to UFRF.

9.3 UFRF may terminate this Agreement by giving Licensee at least sixty (60) days written notice (which notice shall state UFRF's intent to terminate this Agreement and the basis therefore) if commercial development milestones (to the extent relevant) are not satisfied as specified in Section 3.1.3, and if such failure to achieve such milestones was solely due to Licensee's lack of commercially reasonable diligence in pursuing such milestones. In such event, this Agreement shall terminate at the end of the notice period specified by UFRF in such notice of termination (at least 60 days) unless (i) the milestone at issue has been achieved prior to the end of such notice period, in which case this Agreement shall continue in full force and effect, or unless (ii), prior to the end of such sixty (60) day period, Licensee disputes in writing that its lack of commercially reasonable diligence was the sole cause of the failure to achieve such milestone by the target date and commences the dispute resolution procedures under Section 11. In such case, this Agreement (including the parties' respective rights and obligations hereunder) shall remain in full force and effect until the conclusion of the proceedings described in Sections 11.1 and 11.2.

9.4 If Licensee at any time defaults in the timely payment of any monies due to UFRF or the timely submission to UFRF of any Development Report, fails to actively pursue the Development Plan, or commits any breach of any other covenant herein contained, and Licensee fails to remedy, or take steps to diligently remedy, any such breach or default within sixty (60) days after written notice thereof by UFRF, UFRF may, at its option, immediately terminate this Agreement by giving notice of termination to Licensee.

9.5 UFRF may immediately terminate this Agreement upon the occurrence of the second separate default by Licensee within any consecutive twelve (12) month period for failure to pay royalties, patent or any other expenses within thirty (30) days of when due and of when Licensee has been warned by UFRF of such delinquency.

9.6 Upon the termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination. Licensee shall remain obligated to provide an accounting for and to pay royalties earned to the date of termination, and any Minimum Royalties shall be prorated as of the date of termination by the number of days elapsed in the applicable calendar year. Licensee may, however, after the effective date of such termination, sell all Licensed Products, and complete Licensed Products in the process of manufacture at the time of such termination and sell the same, provided that Licensee shall remain obligated to provide an accounting for and to pay running royalties thereon.

**Section 10 Assignability**

Neither party may assign its rights or obligations under this Agreement, except that Licensee may assign this Agreement in connection with the sale of all or substantially all of the assets or stock of the Licensee, whether by merger, acquisition or otherwise, if the successor assumes all of the Licensee's obligations hereunder; provided, however, this Section shall not limit Licensee's right to enter into sublicenses in accordance with the terms of this Agreement.

**Section 11 Dispute Resolution Procedures**

11.1 Mandatory Procedures.

In the event of any dispute between the parties hereto with respect to any matter in connection with this Agreement, compliance with the procedures set forth in this Section shall be a condition precedent to the filing of any lawsuit, other than for injunctive relief, with respect to such dispute.

11.1.1 The parties agree that representatives designated by the parties shall meet at mutually agreeable times and engage in good faith negotiations at a mutually convenient location to resolve such dispute.

11.1.2 If either party subsequently determines that negotiations between the representatives of the parties are at an impasse, the party declaring that the negotiations are at an impasse shall give notice to the other party stating with particularly the issues that remain in dispute.

11.1.3 Not more than 15 days after the giving of such notice, each party shall deliver to the other party a list of the names, addresses, biographical information and resumes of at least five individuals, any one of whom would be acceptable as a neutral advisor in the dispute (the "Neutral Advisor") to the party delivering the list. Any individual proposed as a Neutral Advisor shall have experience in determining, mediating, evaluating, or trying commercial litigation and shall not be affiliated with the party that is proposing such individual.

11.1.4 Within ten (10) days after delivery of such lists, the parties shall agree on a Neutral Advisor. If they are unable to so agree within that time, they shall each select one individual from the lists. The individuals so selected shall meet and appoint a third individual from the lists to serve as the Neutral Advisor.

11.1.5 Within 30 days after the selection of a Neutral Advisor:

(a) each party shall meet separately with the Neutral Advisor on a schedule established by the Neutral Advisor;

(b) following the meeting described in Subsection (a) above, each party shall make a presentation with respect to its position concerning the dispute at a joint meeting of the parties and the Neutral Advisor; and

(c) following such joint meeting, each party shall meet separately with Neutral Advisor, who will attempt to facilitate resolution of the dispute.

11.1.6 The expenses of the neutral advisor shall be shared by the parties equally. All other out-of-pocket costs and expenses for the alternative dispute resolution procedure required under this Section shall be paid by the party incurring the same.

11.1.7 Positions taken and statements made during this alternative dispute resolution procedure shall be deemed settlement negotiations and shall not be admissible for any purpose in

any subsequent proceeding and shall be treated as confidential information by the receiving party.

11.2 Failure to Resolve Dispute.

If any dispute has not been resolved within 30 days following the joint meeting described in Section 11.1.5(b) above, either party may file appropriate administrative or judicial proceedings with respect to the dispute.

**Section 12 Product Liability; Conduct of Business**

12.1 Licensee and its Sublicensee(s) shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold UFRF, the Florida Board of Governors, the University of Florida Board of Trustees, the University of Florida, and each of their directors, officers, employees, and agents, and the inventors of the Licensed Patents, regardless of whether such inventors are employed by the University of Florida at the time of the claim, harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, whether arising from a third party claim or resulting from UFRF's enforcing this indemnification clause against Licensee, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever (other than patent infringement claims) resulting from the production, manufacture, sale, use, lease, consumption, marketing, or advertisement of Licensed Products or Licensed Process(es) or arising from any right or obligation of Licensee hereunder. Notwithstanding the above, UFRF at all times reserves the right to retain counsel of its own to defend UFRF's, the Florida Board of Governors', the University of Florida Board of Trustees', the University of Florida's, and the inventor's interests.

12.2 Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in producing, manufacturing, selling, marketing, using, leasing, consuming, or advertising the products subject to this Agreement and that such insurance coverage lists UFRF, the Florida Board of Governors, the University of Florida Board of Trustees, the University of Florida, and the inventors of the Licensed Patents as additional insureds. Within thirty (30) days after the execution of this Agreement and thereafter annually between January 1 and January 31 of each year, Licensee will present evidence to UFRF that the coverage is being maintained with UFRF, the University of Florida, and its inventors listed as additional insureds. In addition, Licensee shall provide UFRF with at least thirty (30) days prior written notice of any change in or cancellation of the insurance coverage.

**Section 13 Use of Names**

Licensee and its Sublicensee(s) shall not use the names of UFRF, or of the University of Florida, nor of any of either institution's employees, agents, or affiliates, nor the name of any inventor of Licensed Patents, nor any adaptation of such names, in any sales promotion, advertising, or any other form of publicity without the prior written approval of UFRF in each case, except that Licensee may state that it has received a license from UFRF under one or more or the patents and/or applications comprising the Licensed Patents.

**Section 14 Miscellaneous**

14.1 This Agreement shall be construed in accordance with the internal laws of the State of Florida

14.2 The parties hereto are independent contractors and not joint venturers or partners.

14.3 Licensee shall insure that it applies patent markings that meet all requirements of U.S. law, 35 U.S.C. §287, with respect to all Licensed Products subject to this Agreement.

14.4 This Agreement and its Appendices constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

14.5 Licensee shall not encumber or otherwise grant a security interest in any of the rights granted hereunder to any third party.

14.6 Licensee acknowledges that it is subject to and agrees to abide by the United States laws and regulations (including the Export Administration Act of 1979 and Arms Export Contract Act) controlling the export of technical data, computer software, laboratory prototypes, biological material, and other commodities. The transfer of such items may require a license from the cognizant agency of the U.S. Government or written assurances by Licensee that it shall not export such items to certain foreign countries without prior approval of such agency. UFRF neither represents that a license is or is not required or that, if required, it shall be issued.

**Section 15 Notices**

Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given

- when delivered personally,
- if sent by facsimile transmission, when receipt thereof is acknowledged at the facsimile number of the recipient as set forth below,
- the second day following the day on which the notice has been delivered prepaid to a national air courier service, or
- five (5) business days following deposit in the U.S. mail if sent certified mail, return receipt requested:

15.1 If to the University of Florida Research Foundation, Inc.:

President
University of Florida Research Foundation, Inc.
223 Grinter Hall
University of Florida
Post Office Box 115500
Gainesville, FL 32611-5500
Facsimile Number: 352-846-0491

with a copy to:
Office of Technology Licensing
Attn: Director
308 Walker Hall

University of Florida
Post Office Box 115500
Gainesville, Florida 32611-5500
Facsimile Number: 352-392-6600

15.2 If to Licensee:

John Engels
Axogen Corporation
PO Box 357787
Gainesville, FL 32635-7787

With copy to:
Attorney
David G. Bates, Esq.
Gunster Yoakley & Stewart, P.A.
777 South Flagler Dr., Suite 500E
West Palm Beach, FL 33401
Facsimile Number: 561-655-5677

**Section 16 Contract Formation and Authority**

16.1 No agreement between the parties shall exist unless the duly authorized representative of Licensee and the Director of the Office of Technology Transfer of UFRF have signed this document within thirty (30) days of the Effective Date written on the first page of this Agreement.

16.2 UFRF and Licensee hereby warrant and represent that the persons signing this Agreement have authority to execute this Agreement on behalf of the party for whom they have signed.

16.3 Force Majuere.

No default, delay, or failure to perform on the part of Licensee or UFRF shall be considered a default, delay or failure to perform otherwise chargeable hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to: strikes, lockouts, or inactions of governmental authorities, epidemics, war, embargoes, fire, earthquake, acts of God, or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

**Section 17 United States Government Interests**

17.1 It is understood that the United States Government (through any of its agencies or otherwise) has funded research, Grant No. RO1 NS37901, during the course of or under which any of the inventions of the Licensed Patents were conceived or made. The United States Government is entitled, as a right, under the provisions of 35 U.S.C. §202-212 and applicable regulations of Title 37 of the Code of Federal Regulations, to a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Licensed Patents for governmental purposes. If required by the United States Government, Licensee agrees that for

Licensed Products covered by the Licensed Patents that are subject to the non-exclusive royalty-free license to the United States Government, said Licensed Products will be manufactured substantially in the United States. Any license granted to Licensee in this Agreement shall be subject to such right.

17.2 Licensee further agrees that it shall abide by all the requirements and limitations of U.S. Code, Title 35, Chapter 38, and implementing regulations thereof, for all patent applications and patents invented in whole or in part with federal money.

**[ SIGNATURE PAGES FOLLOW]**

**SIGNATURE PAGE AXOGEN-UF LICENSE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

**UNIVERSITY OF FLORIDA RESEARCH FOUNDATION, INC.**

/s/ David L. Day Date: 2/22 ,2006
David L. Day
Director, Office of Technology Transfer

ACKNOWLEDGED AND APPROVED:

/s/ David F. Muir IV Date: 2/23 ,2006
David F. Muir IV

**LICENSEE**

By: /s/ Jamie M. Grooms Date: February 22, 2006

Name and Office: Jamie M. Grooms, CEO

UFRF Ref: UF #- 10569, 10982, 10983

**Appendix A**
**Development Plan**

A development plan of the scope outlined below shall be submitted to UFRF by Licensee prior to the execution of this agreement. In general, the plan should provide UFRF with a summary overview of the activities that Licensee believes are necessary to bring products to the marketplace.

I. Development Program

A. Development activities to be undertaken

(Please break activities into subunits with the date of completion of major milestones)

1.

2.

3.

4.

B. Estimated total development time

II. Governmental Approval

A. Types of submissions required
B. Government agency, e.g., FDA, EPA, etc.

III. Proposed Market Approach

IV. Competitive Information

A. Potential competitors
B. Potential competitive devices/compositions
C. Known competitor's plans, developments, technical achievements
D. Anticipated date of product launch

Total Length: approximately 2-3 pages

**Appendix B**
**Development Report**

When appropriate, indicate estimated start date and finish date for activities.

I. Date Development Plan Initiated and Time Period Covered by this Report.

II. Development Report (4-8 paragraphs).

A. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.

B. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.

III. Future Development Activities (4-8 paragraphs).

A. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
B. Estimated total development time remaining before a product will be commercialized.

IV. Changes to Initial Development Plan (2-4 paragraphs).

A. Reasons for change.
B. Variables that may cause additional changes.

V. Items to be Provided if Applicable:

A. Information relating to Licensed Products that has become publicly available, e.g., published articles, competing products, patents, etc.
B. Development work being performed by third parties, other than Licensee, to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
C. Update of competitive information trends in industry, government compliance (if applicable) and market plan.
D. Information and copies of relevant materials evidencing the status of any patent applications or other protection relating to Licensed Products or the Licensed Patents.

**PLEASE SEND DEVELOPMENT REPORTS TO:**

University of Florida Research Foundation, Inc.
Attn: Director
308 Walker Hall
P.O. Box 115500
Gainesville, FL 32611-5500
Facsimile: 352-392-6600

**Appendix C**
**UFRF Royalty Report**

**Licensee:**_____ **Agreement No.:**_____
**Inventor:**_____ **P#: P**_____
**Period Covered:** From: __/__/2____ Through: __/__/2____
**Prepared By**_____ **Date:**_____
**Approved By:**_____ **Date:**_____

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

**Report Type:** ☐ Single Product Line Report:_____
☐ Multiproduct Summary Report. Page 1 of _____Pages
☐ Product Line Detail. Line:_____Tradename:_____Page:_____

**Report Currency:** ☐ U. S. Dollars ☐ Other _____

| Country | Gross Sales | * Less: Allowances | Net Sales | Royalty Rate | Period Royalty Amount This Year | Last Year |
|---|---|---|---|---|---|---|
| U.S.A. | | | | | | |
| Canada | | | | | | |
| Europe: | | | | | | |
| Japan | | | | | | |
| Other: | | | | | | |
| **TOTAL:** | | | | | | |

Total Royalty: _____Conversion Rate: _____Royalty in U.S. Dollars: $_____

The following royalty forecast is non-binding and for UFRF's internal planning purposes only:

Royalty Forecast Under This Agreement: Next Quarter:_____Q2:_____Q3:_____Q4:_____

* On a separate page, please indicate the reasons for returns or other adjustments if significant.
Also note any unusual occurrences that affected royalty amounts during this period.
To assist UFRF's forecasting, please comment on any significant expected trends in sales volume.

**Exhibit 10.3**

**Confidential treatment requested under 17 C.F.R. §§ 200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.**

**Sid Martin**
**Biotechnology Development Institute**

**INCUBATOR LICENSE AGREEMENT**

THIS AGREEMENT, made this 26th day of September, 2006, between AxoGen Inc., ("Licensee), and the University of Florida Research Foundation, Inc., a Florida not-for-profit corporation ("UFRF") in Gainesville, Florida.

WHEREAS, the University of Florida ("University") has established the Biotechnology Development Institute ("BDI") which seeks to encourage the development of early-stage companies whose technology relates to the molecular life sciences by providing incubator resources which will foster that development ("the Incubator Program"); and

WHEREAS, the BDI has been constructed at Progress Corporate Park (formerly the Echelon Business and Technology Park) in Alachua, Florida, to provide facilities for the Incubator Program; and

WHEREAS, UFRF has agreed to manage certain activities of the Incubator Program, including licensing and managing space in the BDI building, and other services as more particularly described herein; and

WHEREAS, Licensee has submitted an application for admission to the BDI Incubator Program and has submitted or is developing a business plan in support of that application; and

WHEREAS, UFRF, upon review of Licensee's application and supporting documentation, has accepted Licensee's application for participation in the BDI Incubator Program; and

WHEREAS, Licensee is desirous of being the recipient of resources to be made available to the participants in the BDI Incubator Program;

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the parties agree as follows:

1. License Grant. UFRF grants to Licensee and Licensee hereby accepts a license to use the space or spaces located within the BDI building, the exact location and area allowances of which are as indicated in Attachment A (the "Licensed Space"). UFRF shall also make available the following resources and facilities:

(a) Shared Facilities. UFRF will provide a centralized reception and administrative support suite and limited secretarial services. Other services and facilities will include access to centralized mail handling, certain library and reference materials, a copying machine, a fax machine, and limited transportation between the BDI building and the University campus. In addition, the BDI building will contain a central instrumentation lab for common equipment usage, common use cold rooms, autoclaves, a dark room, a 600 sq. ft. greenhouse, support facilities for media preparation, small-scale fermentation experiments, and glassware washing. Such services and facilities will be made available to Licensee on a shared basis with other occupants of the BDI building and others, and, as such, Licensee understands that UFRF will make such services available on a reasonable, best efforts basis, as determined at the sole discretion of the Incubator Manager. The "Incubator Manager" is defined as the appointed representative of the University's Biotechnology Program, or his or her designee.

(b) "If Available" Shared Facilities. UFRF will provide Licensee on an "if available" basis the use of a conference room within the BDI building, together with certain audio visual equipment.

(c) Communications Connections. UFRF shall provide wiring and jacks for one (1) telephone and one (1) computer and network hook-up within each office or lab in the Licensed Space. Licensee shall pay any reasonable additional costs associated with telephone(s) including, but not limited to, service initiation charges, monthly service charges, voice mail charges, long distance charges, and e-mail or connect time charges. Any replacement or upgrading of equipment or service shall be at the expense of Licensee and only with the prior written approval of the Incubator Manager. UFRF will provide the wiring for computer network link-up to the wall outlet at no charge. However, a communications circuit accessory linecord to the T-1 connection is required to access network services and can be provided by UFRF to the Licensee for an additional charge that shall be reasonable. This charge will be added to the monthly invoice following its installation.

(d) Utilities. UFRF shall provide Licensee with electric, gas, water, analytical grade de-ionized water, and sewer service for seven days per week of normal office or laboratory use. BDI shall also supply normal refuse (paper, cardboard, aluminum, etc.) disposal during business days. Normal and reasonable janitorial service shall be provided by UFRF. If Licensee makes excessive use of the facilities as determined by the Incubator Manager in his or her sole discretion, the costs of such excessive use shall be borne by Licensee as additional cash license fees as described in paragraph 3(c) below that shall be reasonable.

(e) Lab and Office Equipment. Upon request of Licensee, UFRF shall use its best efforts to provide for use within the Licensed Space such lab and office equipment as set forth on Attachment A. Such furnishings and equipment shall be selected by UFRF. Any changes in carpet, installed equipment, or furnishings, or any structural changes in the Licensed Space shall be implemented only with the prior written approval of the Incubator Manager, and at the exclusive expense of Licensee.

(f) Core Laboratories and other Resources. UFRF will use its best efforts, but does not guarantee to provide Licensee with access to certain Biotechnology Program resources upon request by Licensee, including access to the Biotechnology Program Core Laboratory Services, and transportation for samples and reagents between campus-based laboratories and facilities and the BDI building. Licensee may, at UFRF's discretion, have access to disclosure, patent, or technology transfer training. Payment of service fees relating to such resources, if any, shall be the sole responsibility of Licensee.

(g) Damage to Facilities. In the event that any licensed facilities, equipment, or any other UFRF or University property is damaged or destroyed through use, misuse, or negligence by Licensee, UFRF may make the required repairs or replacement of damaged property and shall provide Licensee with an invoice representing the reasonable loss to UFRF or the University (whether replaced or repaired or otherwise), said invoice to be due and payable by Licensee in accordance with its terms. In the event that normal maintenance is required for said facilities, equipment, or UFRF or University property, Licensee shall notify the Incubator Manager, who is the sole person authorized to arrange for such service. The cost for any unauthorized repairs ordered by Licensee shall be borne exclusively by Licensee.

2. Scheduling of Use of University Campus Facilities. The Incubator Manager will assist the Licensee to identify and access University of Florida facilities on the main campus as needed.

3. License Fees; Term. The term of this Agreement and Licensee's obligation to pay a license fee (consisting of monthly cash payments, and additional license fees, if any) are as provided below. Licensee shall pay applicable sales, use, or other taxes with respect to all license fees.

(a) License Fees. Cash payments shall commence on the 1st day of October, 2006, (the "Effective Date"), and thereafter the license fee shall be paid in equal monthly installments on the first day of each month during the term, in advance, to the UFRF at its offices at 12085 Research Dr. Alachua, Florida 32615, unless UFRF designates another place. The license fee shall be paid without abatement, deduction, or set off for any reason.

Initial Term:

Occupy Lab/office 170/170A for a total of 963 sq./ft. From October 1, 2006, to September 30, 2007 @ $24.00 per square foot/per year, with applicable sales tax, currently 6.25%, totaling $2046.37 per month.

Renewal Term: To be negotiated. In the event that this Agreement is extended beyond the initial one-year term, all of the terms and conditions contained therein shall apply to the renewal terms except that the amount of license fee may be increased by UFRF for any renewal term.

(b) Term. The initial term of the license shall be for 12 months following the commencement of the term as noted above and shall terminate on September 30, 2007, or on the last day of the month which is 12 months after the Effective Date, whichever is later. Licensee shall have the option of two additional one-year renewal terms, provided written notice of the exercise of said option is furnished to UFRF at least 60 days prior to the expiration of the current term. Licensee's right to exercise such options is subject to satisfactory progress on meeting its R&D milestones and business plan objectives, such progress to be determined in the sole discretion of the University after reasonable consultation with Licensee. Additional renewal terms may be requested by Licensee in the event of special circumstances. Such request may be approved in the sole discretion of UFRF. In the event this Agreement is extended, all of the terms and conditions contained herein shall apply to the renewal terms.

(c) Additional License Fees. Unless otherwise agreed to, the cost of any services or resources requested in writing by Licensee and provided by BDI or the University not indicated in Section 1 above shall be borne by Licensee. Licensee shall be billed separately for said additional services or resources as additional cash license fees, payment for which shall be due and payable in accordance with the terms of the invoice therefore. All such additional license fees shall be reasonable based on the services provided.

(d) Delinquent Fees. If Licensee fails to pay any cash license fees for ninety (90) days or more after such cash license fees are due under this Agreement, UFRF, in its sole discretion, may review Licensee's status. However, this provision does not affect any default provisions or UFRF's termination rights under this Agreement and does not create an obligation to review Licensee's status in the event of nonpayment or other default by Licensee.

4. Termination. Nothing herein shall relieve either party of any outstanding obligation incurred pursuant to this Agreement prior to any termination. The facilities, equipment, and Licensed Space licensed hereunder are licensed for the purpose of furthering Licensee's business objectives as approved by UFRF. Pertinent portions of Licensee's business plan, including its business objectives and financial progress reports are attached as Attachment C.

(a) Not a Lease; Right to Terminate. The parties understand that this Agreement constitutes a license, not a lease, and that the relationship of the parties hereunder is that of licensor and licensee, and not that of landlord and tenant. As such, UFRF reserves the right to change space assignments or to terminate this Agreement by thirty (30) days written notice if the assigned space does not function as a place of business for more than one week, or if Licensee in UFRF's sole discretion no longer meets the criteria for participation in the Incubator Program. Notwithstanding Section 15 below, if UFRF has reason to believe at any time that Licensee is no longer following its business plan as approved by UFRF, UFRF, in its sole discretion, may review Licensee's status. If, in UFRF's sole discretion, Licensee's current status is not in material accord with its business plan, UFRF may terminate this Agreement with 30 days written notice.

(b) Default; Notice of Termination. Should either party be in default in connection with any material terms or conditions stated within this Agreement, including but not limited to those stated in Section 5(a), then the other party shall have the right to terminate this Agreement upon twenty (20) business days written notice, if the other party does not correct such situation within the said twenty business (20) day period.

(c) Termination Without Cause. Either party may terminate this Agreement without cause upon sixty (60) calendar days written notice.

5. Indemnification. Licensee shall at all times during the term of this Agreement and thereafter, indemnify, defend, and hold the UFRF, the University of Florida Board of Trustees, the State of Florida and the board members, officers, employees, and affiliates of any of these entities (hereinafter "Indemnitees"), harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees, whether arising from a third party claim or resulting from UFRF's enforcing this indemnification clause against Licensee, or arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense, or liability of any kind whatsoever resulting from the Licensee's occupancy of the Licensed Space, the use of any University services or resources, arising from any right or obligation of Licensee hereunder, or arising out of Licensee's implementation of its business plan, or research involving, without limitation, the use of animals, human subjects, or biohazardous materials. This indemnification shall not apply to any liability, damage, loss, claim, demand, or expense to the extent that it is attributable to the negligence or intentional wrongdoing of the Indemnitees. Licensee shall, at its own expense, provide attorneys reasonably acceptable to UFRF to defend against any actions brought or filed against any party indemnified hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.

6. Insurance. During the term of this Agreement, Licensee shall, at its sole cost and expense, procure and maintain policies of comprehensive general liability insurance naming the Indemnitees as additional insured.

(a) Comprehensive General Liability. The comprehensive general liability insurance shall provide broad form contractual liability coverage for Licensee's indemnification under this Section 6 in the following minimum amounts:

(i) comprehensive liability (personal injury, including death):$500,000 per occurrence and $1,000,000 per claim and ;

(ii) property damage: $500,000 per occurrence and $1,000,000 per claim.

(b) Self-Insurance. If Licensee elects to self-insure, such self-insurance program must be acceptable to UFRF.

(c) Other Insurance. Licensee shall obtain and keep in force all worker's compensation insurance required under the laws of the State of Florida, and such other insurance as may be necessary to protect Indemnitees against any other liability of person or property arising hereunder by operations of law, whether such law is now in force or is adopted subsequent to the Effective Date.

(d) Cancellation; Replacement Insurance. Licensee shall provide UFRF with written evidence of such insurance upon request, and shall provide UFRF with written notice at least 45 days prior to the cancellation, non-renewal, or material change in such comprehensive general liability insurance; if Licensee does not obtain replacement insurance providing comparable coverage within such 45 day period, or provide self-insurance satisfactory to UFRF, UFRF shall have the right to terminate this Agreement.

7. Destruction of Space. If the Licensed Space is totally destroyed (or so substantially damaged as to be uninhabitable) by storm, fire, earthquake, or other casualty, this Agreement shall terminate as of the date of such destruction or damage, and license fees shall be accounted for as between UFRF and Licensee as of that date. If the Licensed Space is damaged but not rendered wholly uninhabitable by any such casualty or casualties, license fees shall abate in such proportion as the use of the Licensed Space has been destroyed until UFRF has restored the Licensed Space to substantially the same condition as before damage, whereupon full license fees shall commence. Nothing contained herein shall require UFRF to make such restoration, however, if not deemed advisable in its judgment. UFRF shall make its intentions to restore or not to restore said Licensed Space to original condition known to Licensee in writing, within ninety (90) days of such occurrence. If UFRF decides against such reconstruction or fails to provide such notice, Licensee may, at its option, terminate this Agreement.

8. Maintenance; Survey. The Licensed Space shall be maintained in its original condition to the satisfaction of UFRF, normal wear and tear excepted. Prior to the Effective Date, a joint survey of the Licensed Space and equipment, indicating its exact condition, shall be made by representatives of both Licensee and UFRF. A written report of said survey shall be attached hereto and be made also upon termination of this Agreement. In the event that the facilities incur any loss or damage, (other than normal wear and tear) Licensee shall return the Licensed Space to its original condition to the satisfaction of UFRF. Otherwise, UFRF shall make the required repairs or replacement of damaged property, and shall provide Licensee with an invoice due and payable in accordance with its terms. Licensee, under this Section, is deemed to have accepted the Licensed Space in the condition existing on the Effective Date. Licensee is not liable for losses or damage to the Licensed Space, furnishings, or equipment due to the sole negligence of UFRF or the University.

9. Occupancy Fee. Licensee shall pay to UFRF a non-refundable sum of $200.00 to cover key lock changes, minor adaptations and other incidental expenses related to the occupancy of the Licensee. The occupancy fee shall be paid as an addition to the first month's payment. Licensee shall pay applicable sales, use, or other taxes with respect to all occupancy fees.

(a) Additional Occupancy Fee(s). If, at any time, Licensee fails to fully, faithfully, and punctually perform any of the terms, covenants, and conditions contained herein, UFRF shall in no way be precluded from recovering in addition to the said occupancy fee, any other damages or expenses that UFRF may suffer by reason of any violation by Licensee of Licensee's terms, covenants, and conditions contained herein.

10. Interruption of Business. Except as specified in Section 7, neither the University nor UFRF shall be responsible to Licensee for any damages or inconvenience caused by interruption of business or inability to occupy the Licensed Space for any reason whatsoever, providing that, Licensee shall be credited with the cash license fee on a pro rata basis for any working day period, if the business interruption is due to circumstances caused by UFRF that are not in the normal course of business or that are not a part of normal operating procedures at the BDI building.

11. No Assignment. This Agreement is not assignable without the prior written consent of UFRF, and any attempt to do so shall be void.

12. Qualification for Incubator; Non-Interference; Animal or Human Research; Toxic Materials. Licensee's admittance to the Incubator Program is based, in part, on UFRF's review of Licensee's business concept, objectives, and plans as presented in the BDI license application and related documents. Use of the Licensed Space and other facilities, furnishings, equipment, and services made available to Licensee by UFRF or the University shall be in furtherance of Licensee's business concept, objectives, and plans, and shall not be in furtherance of any illicit or illegal purposes, or purposes not consistent with Licensee's business concept, objectives, and plans. Licensee's use of the Licensed Space and the equipment, furnishings, and services available under this Agreement shall not interfere, in any manner, with use by other licensees or occupants of nearby facilities and equipment. Research involving the use of animals, human subjects, or the use of hazardous or toxic materials by Licensee is not permitted unless consented to in writing by BDI, and then only in the manner prescribed by UFRF. UFRF reserves the right to approve in its sole discretion Licensee's use of the Licensed Space and available equipment and services.

13. Compliance with University and UFRF Policies; Requirements. Licensee shall comply with all applicable UFRF and University rules and policies, including policies relating to human and animal subjects, recombinant DNA/RNA practices, biohazards, and radiation safety, as well as federal, state, or local laws, ordinances, codes, rules, permits, licensing conditions, and regulations, including any amendments thereto (collectively, the "Requirements"), in its use of the Licensed Space, and shall procure, at its expense, any licenses, permits, insurance, and government approvals necessary to the operation of its business. The discussion hereunder of specific rules, regulations and laws shall not be construed to lessen in any way the obligation of the Licensee to follow all applicable rules, regulations and laws, including without limitation, the guidelines and policies of the University Division of Environmental Health and Safety.

(a) Certain Federal Statutes. “Hazardous substance” as used herein includes any “hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. ‘ 9601, *et seq*., including any amendments thereto (“CERCLA”), any substance, waste, or other material considered hazardous, dangerous, or toxic under any of the Requirements, petroleum and petroleum products, and natural gas. “Release” as used herein means any intentional or unintentional spilling, pumping, emitting, emptying, discharging, escaping, leading, dumping, disposing, or abandonment of any hazardous substance. Licensee shall comply with all Requirements governing the discharge, release, emission, or disposal of any hazardous substance and prescribing methods for or other limitations on storing, handling, or otherwise managing hazardous substances including, but not limited to, the then-current versions of the following federal statutes, any Florida analogs, and the regulations implementing them: the Resource Conservation and Recovery Act (42 U.S.C. ‘ 6901, *et seq*.); CERCLA; the Clean Water Act (33 U.S.C. ‘ 1251, *et seq*.); the Clean Air Act (42 U.S.C. ‘ 7401, *et seq*.); and the Toxic Substances Control Act (15 U.S.C. ‘ 2601, *et seq*.). Licensee shall comply with all requirements of the Animal Welfare Act (7 U.S.C.” 2131, *et seq*.) as the same may be amended, and all similar federal, state, and local laws, codes, ordinances, and regulations.

(b) Hazardous Substances; Disposal. Licensee covenants and agrees that it will not use or allow the Licensed Space to be used for the storage, use, treatment, disposal, or other handling of any hazardous substance without the prior written consent of UFRF. Attached to the License as Attachment D is a list prepared by Licensee identifying the hazardous substances which Licensee intends to use and store in the premises, and setting forth the quantity, use, and location thereof. UFRF hereby permits Licensee to use and store the hazardous substances set forth on Attachment D within the Licensed Space, provided that Licensee complies in all respects with the Requirements and this Section and that such hazardous substances are not disposed of in the sanitary sewer system of the BDI building unless the Requirements permit and the UFRF has consented to such method of disposal in writing, having determined in UFRF’s sole and absolute discretion that such disposal will not harm the sanitary sewer piping. Licensee shall request in writing UFRF’s written approval before the introduction of any additional hazardous substance or biological use, handling, treatment, storage, or disposal in the Licensed Space is undertaken. Such request shall set forth a description of the hazardous substance or biological use involved, the maximum quantity to be present in the Licensed Space at any time, its location within the Licensed Space, and its use in Licensee’s business. The Incubator Manager or his or her designee will expedite the request for the introduction of hazardous substances to the office of Environmental Health and Safety for approval and will inform the Licensee of the outcome for approval as soon as the Incubator Manager and his or her designee receives notification. Licensee covenants and agrees to assume the responsibility for the cost and disposal of hazardous chemicals created by its research during its tenancy at the BDI building, within 180 days of their initial storage. Designated storage areas will be provided by UFRF within the BDI building. Chemicals for disposal must be labeled and packaged in accordance and compliance with University Environmental Health and Safety regulations and guidelines for storage and disposal of hazardous chemicals. UFRF assumes no liability for hazards or spills created by the Licensee inside or outside of the BDI building, or during the storage of hazardous chemicals with a private firm or entity after such chemicals are removed from the BDI building.

(c) Violations. Licensee shall take all steps necessary to remedy any violation of any Requirements by the Licensee whether or not a citation or other notice of violation has been issued by a governmental authority. Licensee shall at its own expense, promptly contain and remediate any release of hazardous substances arising from or related to Licensee’s hazardous substance activity in the Licensed Space, the BDI building, or the environment and remediate any resultant damage to the property, persons, or the environment.

(d) Environmental Inspections. UFRF reserves the right to periodically conduct an environmental and safety inspection of the Licensed Space and areas beyond such space, where necessary, such as the HVAC system and the laboratory exhaust venting system. The scope of such inspection may include, but not be limited to, having the fume hoods tested and inspected. Licensee shall give prompt written notice to UFRF of any release of any hazardous substance in the Licensed Space, the BDI building or the environment not made in conformance with the Requirements, including a description of remediation measures and any resulting damage to persons, property, or the environment. Licensee shall upon expiration or termination of this License, surrender the Licensed Space to UFRF free from the presence and contamination of any

hazardous substance. Following any breach by Licensee of the Requirements of this Section, or any reasonable safety or environmental concern by UFRF, UFRF may withdraw its consent to Licensee's hazardous substance activity (or any portion thereof) by written notice to Licensee. Licensee shall terminate its hazardous substance activity immediately upon notice and remove all hazardous substances from the Licensed Space within 15 days from the date of such notice unless such breach or concern is promptly addressed and corrected by Licensee to UFRF's sole satisfaction. Licensee shall indemnify, hold harmless and (at UFRF's option) defend the University or UFRF, their agents and employees, from and against all claims, actions, losses, costs and expenses (including attorney's and other professional fees), judgments, settlement payments, and, whether or not reduced to final judgment, all liabilities, damages, or fines paid, incurred, or suffered by such parties in connection with loss of life, personal injury, or damage to property or the environment arising, directly or indirectly, wholly or in part from any conduct, activity, act, omission, or operation involving the use, handling, generation, treatment, storage, disposal, other management or release of any hazardous substance at, from, or to the Licensed Space, whether or not Licensee has acted negligently with respect to such hazardous substance. Licensee's obligations and liabilities hereunder shall survive the expiration or other termination of this Agreement.

14. UFRF's Control of Facilities. Notwithstanding anything to the contrary herein, UFRF reserves the right at all times to control all facilities licensed hereunder, and to enforce all applicable necessary laws, rules, and regulations, including but not limited to, the rules and guidelines of the University of Florida Division of Environmental Health and Safety.

15. Business Plan and R&D Review. At the request of UFRF, but not more frequently than at six month intervals, Licensee agrees to review its current and prospective business plan and research and development program status with UFRF. Progress may be monitored in relation to the previous most recent plans which have been reviewed and approved by both Licensee and UFRF. If, in UFRF's sole discretion, the Licensee's current status is not sufficiently in accord with the most recent previously reviewed plans, UFRF may give written notice of default in accordance with Section 4 above.

16. Locks. UFRF will install all locks attached to the Licensed Space and provide two keys for each lock to Licensee. UFRF and the University will have keys to all locks, and may enter the Licensed Space at reasonable times, for inspection, maintenance or repair, or for any other necessary reason. Entry for other than normal maintenance and inspection activities shall be preceded by appropriate notice to Licensee. In the event of an emergency, notice will be given at the first reasonable opportunity, even after the fact.

17. Right to Remove Property. Unless in default of contract, Licensee shall have the right to remove any equipment, goods, fixtures, and other property which it has placed or affixed within or to the Licensed Space, provided Licensee repairs damage caused by such removal. Licensee shall not remove improvements made to the facilities or Licensed Space by UFRF or on behalf of UFRF during this Agreement.

18. Use of Names. Licensee shall not use the names of BDI, the University, or UFRF or their employees or agents, nor any adaptation thereof, in any advertising, promotional, or sales literature without prior written consent obtained from UFRF in each case, except that Licensee may state that it is a Licensee of UFRF pursuant to this Agreement, that it is a participant in the Incubator Program. Licensee will cooperate fully with UFRF to publicize the Incubator Program and Licensee's participation in such program.

(a) Request for Consent to Use of Names. Requests for consent to use of names of BDI, the University, or UFRF or any of their employees or agents shall be sent to the Incubator Manager. Notwithstanding the foregoing, the University and UFRF consent to references to them pursuant to any requirements of applicable law or governmental regulations, provided that, in the event of any such disclosure, Licensee shall afford UFRF the prior opportunity to review the text of such disclosure. Licensee shall use its best efforts to comply with any reasonable requests by UFRF regarding changes.

(b) Consent Deemed Granted. Where consent of a party is required under this Section, such consent shall be deemed granted if no written objection (or oral objection, confirmed immediately in writing) is received by the requesting party on or before the twentieth calendar day following the date a written request for consent was received by the requested party. For the purposes of this Section only, a item shall be

deemed received as follows: (i) if hand delivered, upon delivery; (ii) if sent by electronic mail, upon confirmation by the sending carrier that the message was deposited to the addressee's mailbox; (iii) if sent by registered mail, return receipt requested, upon signing by the receiving party; or (iv) if sent by ordinary mail in the United States, postage prepaid, and addressed as set forth below, on the fifth calendar day after deposit in the mail.

19. No Partnership. Nothing contained in this Agreement shall create any partnership or joint venture between the parties. Neither party may pledge the credit of the other or make any binding commitment on the part of the other.

20. Miscellaneous. The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof. The titles herein are for convenience only. This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the State of Florida.

21. Notices. Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of UFRF:

President, University of Florida Research Foundation, Inc.
University of Florida
109 Grinter Hall
Gainesville, Florida 32611

PLEASE MAKE ALL CHECKS PAYABLE TO:

University of Florida Research Foundation, Inc.
c/o Sid Martin Biotechnology Incubator
12085 Research Dr.
Alachua, Fl. 32615-6832

In the case of Licensee:

AxoGen
P.O. Box 357787
Gainesville, Fl. 32635

22. Inventions, Improvements, and Discoveries.

a) Any inventions, improvements, or discoveries, patentable or unpatentable, which are conceived or made solely by one or more persons who are employed solely by Licensee, and where such employee is also not an employee of the University of Florida or subject to the University of Florida patent policy, whether developed in the BDI building or through the use of other facilities, equipment, or services, access to which is provided under this Agreement, shall be owned by Licensee and University shall have no claim to or rights in such inventions, improvements, or discoveries.

b) Subject to paragraph (e) in this section 22, ownership of any inventions, improvements, or discoveries, patentable or unpatentable, which are conceived or made by one or more persons, all of whom are simultaneously employed or appointed by University and by Licensee, whether developed in the BDI building or through the use of other facilities, equipment, or services, access to which is provided under this

Agreement, shall be determined in accordance with the University of Florida Intellectual Property Policy (a copy of which is attached hereto as Attachment D) and any applicable provisions of the conflict of interest exemption monitoring plan.

c) Subject to paragraph (e) in this section 22, ownership of any inventions, improvements, or discoveries, patentable or unpatentable, which are conceived or made by more than one person, where at least one such person is employed solely by Licensee and at least one such person is simultaneously employed or appointed by University and by Licensee, whether developed in the BDI building or through the use of other facilities, equipment, or services, access to which is provided under this Agreement, shall be jointly owned by Licensee and by University (with respect to University, in accordance with its Intellectual Property Policy and any applicable provision of the conflict of interest exemption monitoring plan), subject to any other applicable agreements.

d) Subject to paragraph (e) in this section 22, ownership of any inventions, improvements, or discoveries, patentable or unpatentable, which are conceived or made by more than one person, where at least one such person is employed solely by Licensee, and where such person is not also employed by the University of Florida or subject to the University of Florida patent policy, and at least one such person is employed solely by or appointed by University, whether developed in the BDI building or through the use of other facilities, equipment, or services, access to which is provided under this Agreement, shall be jointly owned by Licensee and by University (with respect to University, in accordance with its Intellectual Property Policy and any applicable provision of the conflict of interest exemption monitoring plan), subject to any other applicable agreements.

e) Any inventions, improvements, or discoveries patentable or unpatentable, which are conceived or made by more than one person, where at least one such person is employed by Licensee, and where such person is not also employed by the University of Florida or subject to the University of Florida patent policy, and at least one such person is employed solely or appointed by University, where the subject matter of such invention, improvement, or discovery is outside the scope of the employment or appointment of such University employee or appointee, in the sole but reasonable discretion of the University of Florida Office of Technology Licensing, or no University support was used in connection with the invention, improvement, or discovery whether developed in the BDI building or through the use of other facilities, equipment, or services, access to which is provided under this Agreement, shall be the sole property of Licensee.

23. Confidentiality. UFRF will use its best efforts to prevent the dissemination of any proprietary information related to work of the Licensee unless authorized to do so in writing by Licensee. UFRF shall have, however, the right to disclose Licensee's activities in a general, descriptive manner.

IN WITNESS THEREOF, the parties have executed this License Agreement as of the date first above written.

University of Florida Research Foundation, Inc.

By: /s/ David L. Day
David L. Day, Director of Technology Transfer

Date 9/29/08

AxoGen, Inc.

By: /s/ John P. Engels
John P. Engels, Vice President

Date 09/28/2006

ATTACHMENT A
LICENSED SPACE

| | | |
|---|---|---|
| Address: | Biotechnology Development Institute<br>12085 Research Drive<br>Alachua, Fl 32615-6831 | |
| Lab Space: | Room #170/170a | 963 Square feet |
| Total Square Feet: | 963 Square feet | |
| Furniture and Equipment: | | |
| | 1 - Standard office desk | |
| | 1 - Standard office chair | |
| | 1 - File cabinet | |
| | 1 - Bookcase | |
| | Biological hood | |
| | Chemical fume hood | |

APPENDIX A

TECHNOLOGY KNOW-HOW AND RESEARCH DEVELOPMENT

[**]

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

ATTACHMENT C

EXTRACTS FROM BUSINESS PLAN

**Company Summary**

AxoGen provides surgeons biological solutions to repair and regenerate peripheral nerves, bringing relief and restoring functionality to patients who suffer peripheral nerve injuries. The company brings to this market a unique combination of patented technologies, an experienced management team, a shortened regulatory pathway for immediate market penetration, and a rich pipeline of new products and technologies to drive future growth. AxoGen plans to establish a leadership position in the peripheral nerve market, revolutionizing peripheral nerve procedures with demonstrably superior technologies.

**Market Opportunity**

Every year in the US, several million people suffer traumatic, iatrogenic or nontraumatic peripheral nerve injury. Injuries to the peripheral nervous system (PNS) are a major source of disability, impairing the ability to move muscles or to feel normal sensations. To correct these problems, more than one million procedures were performed in the US in 2002, totaling more than $10 billion in medical costs. In addition, more than 250,000 patients in the US suffered major traumatic peripheral nerve injuries, but were not treated or were under treated. Using conservative estimates, the potential US market for AxoGen products exceeds $1 billion.

ATTACHMENT D

LIST OF HAZARDOUS SUBSTANCES

(According to section 13 (b), a list prepared by Licensee identifying the hazardous substances which Licensee intends to use and store in the premises, and setting forth the quantity, use, and location thereof need to be shown as attachment D.)

ATTACHMENT E

ANIMAL SAFETY AND COMPLIANCE

(Section 12 of the ILA states that research involving the use of animals by Licensee is not permitted unless consented to in writing by BDI. Complete and submit all required forms and registration with the appropriate agency or department on campus and furnish a copy for your ILA record.)

**Exhibit 10.4.1**

**CONFIDENTIAL TREATMENT REQUESTED UNDER 17 C.F.R. §§ 200.80(B)(4) AND 230.406. THE CONFIDENTIAL PORTIONS OF THIS EXHIBIT HAVE BEEN OMITTED AND ARE MARKED ACCORDINGLY. THE CONFIDENTIAL PORTIONS HAVE BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A CONFIDENTIAL TREATMENT REQUEST.**

# AXOGEN
## AMENDED AND RESTATED NERVE TISSUE PROCESSING AGREEMENT

**"LIFENET HEALTH"**

**LifeNet Health**
**1864 Concert Drive**
**Virginia Beach, VA 23453**

**"AXOGEN"**

**AXOGEN CORPORATION**
**13859 Progress Blvd**
**Suite 100**
**Alachua, FL 32615**

This **Amended and Restated AXOGEN Nerve Tissue Processing Agreement** ("Agreement") consists of this signature page, the attached Terms and Conditions, and the Exhibits marked below. This Agreement authorizes **LIFENET HEALTH** to process human cadaveric tissue for **AXOGEN**. The term of this Agreement shall commence on the Effective Date and shall end as provided in the Terms and Conditions. For purposes of this Agreement, the "Effective Date" shall be the last date executed below. This Agreement becomes legally binding upon signature below by authorized representatives of the parties, and supersedes the AXOGEN Nerve Tissue Processing Agreement by and between the parties, dated November 16, 2007 (the "Original Agreement").

**Exhibits**

**____A — BATCH SCHEDULE**

**____B — FEE SCHEDULE**

**LIFENET HEALTH**

**By:** /s/ Gordon Berkstresser

**Title:** CFO

**Date:** 2-26-08

**AXOGEN**

**By:** /s/ Jamie M. Grooms

**Title:** CEO

**Date:** 2/27/08

## TERMS AND CONDITIONS

### 1. PROCUREMENT

**AXOGEN** shall provide **LIFENET HEALTH** with aseptically procured human allograft nerve tissue from its donor sources, suitable for Processing (as defined below) by **LIFENET HEALTH** into Product**,** and distribution by **AXOGEN** for clinical implantation. The term "Product" means human nerve allografts based on AxoGen's proprietary technology that meet Product Specifications (as defined below) and meet applicable federal, state and local regulations and in accordance with the Standards for Tissue Banking of the AATB. The term "aseptic procurement" means the procurement of nerve tissues under aseptic conditions using aseptic techniques.

### 2. SERVICES

**LIFENET HEALTH** shall receive aseptically procured nerve tissues for processing in accordance with all applicable federal, state and local regulations and in accordance with the Standards for Tissue Banking of the AATB and, on a schedule agreed to in writing by the parties, manage, perform and document aseptic debriding, processing and packaging of aseptically procured nerve tissues in accordance with **AXOGEN's** proprietary process ("Process" or the act of *"Processing"*). LifeNet Health will follow instructions and meet quality standards defined in **AXOGEN** created SOPs governing Processing and revised from time to time by **AXOGEN** and approved by **LIFENET HEALTH** on an ongoing basis and incorporated herein and in accordance with all applicable federal, state and local regulations and in accordance with the Standards for Tissue Banking of the AATB (the "Product Specifications"). **LIFENET HEALTH** shall not make any changes to the Process or Product Specifications without the prior written consent of **AXOGEN**. **LIFENET HEALTH** shall provide routine sterilization of daily supplies. **LIFENET HEALTH** reserves the right to refuse to Process any donor or donor material that it, in its reasonable discretion, finds unacceptable.

### 3. EQUIPMENT

**AXOGEN** shall supply **LIFENET HEALTH** with all processing reagents and equipment ("Equipment") necessary to Process each nerve tissue, excluding freezers, refrigerators, sealers (to be maintained by **LIFENET HEALTH**) and various disposable supplies such as sterile gowns, sleeves, gloves, table covers, and various cleaning supplies, which shall be supplied by **LIFENET HEALTH**. **AXOGEN** shall own all the Equipment. **LIFENET HEALTH** shall assist AXOGEN in making any UCC or other filings necessary to secure and evidence **AXOGEN**'s ownership of such Equipment as and when requested by **AXOGEN. AXOGEN** shall also supply the necessary calibration and preventative maintenance documents required for all Equipment purchased for **LIFENET HEALTH**. **LIFENET HEALTH** will work with **AXOGEN** to perform the necessary Equipment calibrations and preventative maintenance. **LIFENET HEALTH** shall (i) use the Equipment only for the purposes authorized by **AXOGEN**, (ii) restrict access to and use of the Equipment to those individuals for whom such access and use is required to conduct activities on behalf of **AXOGEN** and (iii) deliver the Equipment to **AXOGEN** or its designee on the earlier of the termination or expiration of this Agreement, or as otherwise requested by **AXOGEN**. In the event that any item of Equipment under **LIFENET HEALTH**'s control becomes damaged or rendered unusable due to negligence, **LIFENET HEALTH** shall replace or repair such Equipment at its own expense, with **AXOGEN'S** prior written approval.

### 4. DOCUMENTATION AND RECORD MAINTENANCE

**AXOGEN** shall provide **LIFENET HEALTH** with documentation of the suitability of the nerve tissue donors. This documentation shall include a copy of **AXOGEN'S** Medical Director release of donor nerve tissue, which shall include **AXOGEN'S** Medical Director confirmation of negative/nonreactive results of all required serologicals testing, acceptable pre-Processing bacteriologic culture results of donor nerve tissue, acceptable results of any or all laboratory analyses and medical information, and acceptable review of donor consent form in accordance with local regulations. **AXOGEN** expressly warrants to its knowledge the validity, accuracy and completeness of the information included in the documentation provided to **LIFENET HEALTH**.

**LIFENET HEALTH** shall maintain appropriate records to document all aspects of Processing and training of **LIFENET HEALTH** employees, and provide copies of such Processing records to **AXOGEN**.

**LIFENET HEALTH** shall also maintain adequate records to document disposition of all materials received from **AXOGEN**, whether returned to **AXOGEN** or discarded.

**AXOGEN** is responsible for the review of all documentation and the final release of nerve tissue grafts Processed for **AXOGEN** by **LIFENET HEALTH**.

### 5. NOTICE OF UNSUITABILITY OR COMPLAINTS

**LIFENET HEALTH** shall notify **AXOGEN** of problems with any nerve tissue provided for Processing, and consult with and follow instructions from **AXOGEN** as to the disposition of such nerve tissue. **AXOGEN and LIFENET HEALTH will immediately notify the other regarding any adverse events or complaints regarding Product.**

**AXOGEN** shall have the right to reject any Product supplied that does not meet the Product Specifications ("Nonconforming Product") by delivering written notice of such Nonconforming Product within a reasonable time frame agreed by the parties. If such Nonconforming Product is (a) caused by the negligence or misconduct of **LIFENET HEALTH** or (b) failure of **LIFENET HEALTH** to follow **AXOGEN**'s Processing standards or applicable laws, **LIFENET HEALTH** shall reduce proportionally the fee per batch; for example, if ten percent (10%) of the batch was determined to be Nonconforming Product, if as a result of either 5(a) or 5(b), the fee per batch would be reduced by ten percent (10%). A batch is equal to one donor.

### 6. MINIMUMS

**AXOGEN** shall provide a minimum number of donors for Processing, and **LIFENET HEALTH** shall Process such minimum number of donors in each 12-month period beginning upon the effective date of the debridement processing arrangement between **AXOGEN** and **LIFENET HEALTH**, in accordance with the batch schedule provided in Appendix A and as the same may be amended by the parties in writing from time to time. In the event **LIFENET HEALTH** receives less than the number of donors provided for in a given period as contained in Appendix A, a minimum charge equal to the amount determined by subtracting the amount of donors provided from such minimum number of donors, multiplied by the fee in Appendix B, shall constitute the minimum fee due to **LIFENET HEALTH** for such

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period. **LIFENET HEALTH** shall notify **AXOGEN** in writing 180 days in advance if it will not be able to

Process on the schedule agreed by the parties. In such case, the minimums for that 12-month period will not apply.

**7. SHIPPING**

**AXOGEN** shall ship nerve tissue to **LIFENET HEALTH** for Processing in the manner agreed to by the parties and in accordance with all applicable state, federal, local or transportation carrier rules and regulations.

**LIFENET HEALTH** shall package all Product in a manner specified by **AXOGEN** in **AXOGEN** created SOPs governing packaging and revised from time to time by **AXOGEN** and **LIFENET HEALTH** on an ongoing basis and incorporated herein and in accordance with all applicable federal, state and local regulations and in accordance with the Standards for Tissue Banking of the AATB. **LIFENET HEALTH** shall return all Product to **AXOGEN** in a manner that complies with all transportation carrier, federal, state, and local regulations, and in a manner specified by **AXOGEN** in **AXOGEN** created SOPs governing shipping and revised from time to time by **AXOGEN** and **LIFENET HEALTH**.

**LIFENET HEALTH** shall not be responsible for any financial losses of **AXOGEN** for nerve tissue or Product that is lost, damaged or otherwise rendered useless in transit (to **LIFENET HEALTH** or from **LIFENET HEALTH**) except where such loss is due to the negligence or willful misconduct of **LIFENET HEALTH**.

**8. BILLING**

**AXOGEN** shall pay all invoices for services rendered by **LIFENET HEALTH** within 30 days of the date on each invoice. **LIFENET HEALTH** shall have the right to impose a charge of 1 1/2% per month on the undisputed unpaid balance of any past due amount owed by **AXOGEN** and the right to refuse to respond to future requests issued by **AXOGEN** until all such undisputed past due amounts have been paid in full.

**9. FEES**

**AXOGEN** shall pay for Processing services in accordance with the fee schedule provided in Appendix B.

**AXOGEN** is responsible for all shipping fees to and from **LIFENET HEALTH** and accordingly, shall provide **LIFENET HEALTH** with its transportation carrier account number. **LIFENET HEALTH** will direct transportation carrier to insure shipments of Product as specified by **AXOGEN**.

**10. LIMITATIONS**

**LIFENET HEALTH** does not guarantee or warrant the performance of services under this Agreement except as provided in this Section 10 and Section 11. **LIFENET HEALTH** shall not be responsible for any loss or damage arising out of defective performance of services unless attributable to **LIFENET HEALTH'S** negligence or willful misconduct. **LIFENET HEALTH** shall not be liable for any indirect, incidental, consequential or special damages resulting to **AXOGEN** from the operation of this Agreement except in respect of a breach of Section 12 herein.

**LIFENET HEALTH** shall make its best efforts to maximize the amount and/or type of nerve tissue grafts that can or will be used manner requested or at the time specified, but shall use its best efforts to achieve complete services in the time requested by **AXOGEN**.

**11. STANDARDS**

**LIFENET HEALTH** and **AXOGEN** will comply with all applicable standards of procedure and operation required by the AATB and all applicable federal and state regulatory requirements throughout the term of this Agreement. **LIFENET HEALTH** will update its federal and state registrations/licenses to include the processing of nerve tissue. The warranties in Section 10 and Section 11 are **LIFENET HEALTH'S** only warranties with respect to the provision of Processing services and Product, and they are exclusive and in lieu of all other warranties whether oral or written.

**12. CONFIDENTIAL INFORMATION**

Neither party ("Receiving Party") shall use in any way other than as required for the proper performance of its obligations under this Agreement and shall not disclose to any third party any information given to it by the other party ("Disclosing Party") or otherwise acquired by a Receiving Party relating to the Disclosing Party's nerve tissue grafts, processes (and in the case of **AXOGEN** as the Disclosing Party, including but not limited to the Process), plans, records, techniques, procedures, customers, trade secrets or general business operations. Any information that a Receiving Party legally possessed prior to disclosure to it by the Disclosing Party's representative, which is lawfully published or which otherwise lawfully becomes a part of general knowledge from sources other than Receiving Party shall not be subject to the restrictions of this Section 12. The obligations under this Section 12 shall survive any expiration or termination of this Agreement. In addition to the forgoing terms of this Section 12, all information disclosed by the Disclosing Party to the Receiving Party in advance of the Effective Date pursuant to the Confidentiality Agreement (the "CDA") by and between **AXOGEN** and **LIFENET HEALTH**, dated September 20, 2007, or the Original Agreement is hereby subject to this Agreement, including, without limitation, this Section 12. All information generated by **LIFENET HEALTH** in performing the services hereunder or related to the Process shall be the information of **AXOGEN** subject to the confidentiality and nonuse obligations herein.

**13. INTELLECTUAL PROPERTY**

**LIFENET HEALTH** acknowledges and agrees that **AXOGEN'S** Process and all methods, practices and works related thereto, whether or not patentable, and any applicable patents relating thereto or arising therefrom, are intellectual property owned solely by **AXOGEN** ("**AXOGEN** Intellectual Property"). In the event that during the term of this AGREEMENT, an employee(s), or contract worker(s) of **LIFENET HEALTH** alone conceives of an improvement, invention or discovery solely relating to **LIFENET HEALTH** proprietary technology, such improvement, invention, or discovery, and any corresponding proprietary rights throughout the world ("**LIFENET Technology**"), shall be the property of **LIFENET HEALTH**. **AXOGEN** shall have a royalty free, non-exclusive right to practice and use any such **LIFENET HEALTH** Technology as it pertains to Processing whether or not covered by any claim of any patent that may issue under the terms of this Article VII. In the event that during the term of this AGREEMENT, an employee(s), and/or contract worker(s) of **LIFENET HEALTH** or **AXOGEN** or both jointly conceive of an improvement, invention or discovery, and any corresponding proprietary rights throughout the world, other than **LIFENET HEALTH** Technology (a) relating to **AXOGEN** Intellectual Property or (b) during the performance of the services hereunder (**"AXOGEN**

for Processing from a single nerve tissue donor based on **AXOGEN** Specifications. Except as defined in this Agreement in regards to the stipulations of Nonconforming Product in Section 5, **LIFENET HEALTH** shall not be liable or responsible to **AXOGEN**, its customers, or patients for being unable to perform any services in the

**Technology**"), such **AXOGEN** Technology shall be the property of **AXOGEN**. **LIFENET HEALTH** shall have no right to use the **AXOGEN** Intellectual Property and AXOGEN Technology except in its performance of this Agreement. **LIFENET HEALTH** shall, and shall cause **LIFENET HEALTH** personnel to, keep appropriate records of the work done pursuant to this Agreement, including

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laboratory notebooks or batch records, sufficient to properly document the results of such work and otherwise sufficient to determine identity and dates of inventorship of any new **AXOGEN** Intellectual Property or **AXOGEN** Technology; and shall make such records available to **AXOGEN** upon reasonable notice during **LIFENET HEALTH** normal business hours.

**14. PUBLICATION**

No announcement, news release, public statement, publication, or presentation relating to the existence of this Agreement, the subject matter herein, or either party's performance hereunder (collectively, a "Publication") will be made by a party without the other party's prior written approval whether during or after the termination of this Agreement, except as required by law. Each party agrees to submit each Publication it proposes to make to the other party for purposes of such other party's review, comment and approval. Each party further agrees to respond as promptly as reasonably practicable and likewise agrees that it will not unreasonably withhold approval of such Publication. The parties agree that they will use reasonable efforts to coordinate the initial announcement or press release relating to the existence of this Agreement so that such initial announcement or press release by each is made contemporaneously.

**15. INDEMNIFICATION**

**AXOGEN** shall indemnify and hold harmless **LIFENET HEALTH**, its agents, its officers, trustees and employees from and against all third party claims, damages, suits, liabilities, costs, charges, demands, losses and other expenses (including, but not limited to, attorneys' fees) attributable to bodily injury, sickness, disease or death or to injury or destruction of tangible property ("Losses") arising out of or resulting in whole or in part from any act or omission of **AXOGEN**, its employees or any other party acting under **AXOGEN'S** supervision or control, provided, however, that the foregoing indemnification obligations shall not apply to the extent that such Losses are caused by action or omission to act of **LIFENET HEALTH** for which **LIFENET HEALTH** is required to indemnify **AXOGEN** under the paragraph below.

**LIFENET HEALTH** shall indemnify and hold harmless **AXOGEN**, its agents, its officers, trustees and employees from and against all Losses arising out of **LIFENET HEALTH'S** failure to perform in accordance with its obligations under the terms of this Agreement or the negligence or willful misconduct of **LIFENET HEALTH**.

**16. LIABILITY INSURANCE**

Each party shall each maintain in force during the term of this Agreement professional liability insurance coverage under a policy or policies issued by a carrier satisfactory to the other party with minimum limits of five million United States dollars ($5,000,000 U.S.), and no more than a fifty thousand United State dollars ($50,000 U.S.) deductible. Each party shall provide the other with a certificate(s) of insurance suitable to the other party which state that the above required coverage is in full force and effect and will remain in effect throughout the term of this Agreement unless the carrier provides not less than sixty (60) days prior written notice of expiration or cancellation to both the insured party and the party to whom such certificate is issued.

**17. FORCE MAJEURE**

Performance under this Agreement may be delayed by a party**,** and the other party shall not be held in breach of any of its obligations under this Agreement or be liable for damages resulting from such delay if such delay is due to acts of God, acts of civil or military authority, fires, floods, labor troubles, unavailability of

**18. TERM AND TERMINATION**

This Agreement shall be effective as of the Effective Date and shall remain in effect for twenty-four (24) months. Following the initial term of twenty-four (24) months, this Agreement shall automatically renew for additional terms of one (1) year unless written notice of termination is received by one party from the other party at least one hundred eighty (180) days prior to any such automatic renewal.

Either party may terminate this Agreement, in the event the other party has committed a material breach by giving the alleged breaching party 60 days to cure the breach. This Agreement is subject to immediate termination for failure to maintain the required insurance coverage under Section 15 or for becoming insolvent or filing bankruptcy.

Termination shall not release or affect, and this Agreement shall remain fully operative as to, any obligations or liabilities incurred by **AXOGEN** prior to the effective date of such termination; provided that all indebtedness of **AXOGEN** to **LIFENET HEALTH** of any kind shall become immediately due and payable on the effective date of termination, and **LIFENET HEALTH** may deduct from any sums its owes to **AXOGEN** any sums owed by **AXOGEN** to **LIFENET HEALTH**.

Termination of this Agreement shall not terminate any provision of this Agreement intended to survive termination, including but not limited to Sections 10 and 12.

**19. MISCELLANEOUS**

A. This Agreement and the Appendices attached hereto constitute the entire agreement between the parties and supersedes any and all other oral or written agreements or understandings regarding this arrangement, including, without limitation, the Original Agreement. This Agreement may not be amended except by a written document signed by both parties.

B. All notices required or desired to be given under this Agreement shall be deemed delivered when deposited in U.S. Certified Mail, return receipt requested, postage prepaid, addressed to the recipient at the address indicated in the signature page of this Agreement or at such other address as the recipient may hereafter provide to the other party hereto. Any such notice shall be deemed to be delivered two (2) days after such notification is deposited in the U.S. Mail, certified, postage prepaid, or upon the hand delivery of such notice, as the case may be.

C. Each party shall, as and when required by the other party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

D. This Agreement and the performance of any services hereunder shall be governed by and construed in accordance with the laws of the State of Delaware excluding its conflict of laws provisions.

E. Neither Party shall assign nor transfer this Agreement or any interest, right or obligation hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

F. All agreements and covenants of this Agreement are severable, and if any are declared invalid by a competent court, this Agreement shall be interpreted as if the invalid agreement or covenant were not contained in this Agreement, and all remaining covenants and provisions of this Agreement shall remain in full force and effect.

G. Neither party shall be deemed the drafter of this Agreement and the interpretation of any ambiguity construed in this Agreement will not be affected by claims that a particular party drafted any portion hereof.

transportation, epidemics, war or riot.

H. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

**END OF TERMS AND CONDITIONS**

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**APPENDIX A**

**BATCH SCHEDULE**

[**]

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

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**APPENDIX B**

**FEE SCHEDULE**

1) The fee for providing services to Process nerve tissue into Product according to AXOGEN Specifications, but not including [**], will be determined on [**].

   Upon successful implementation of a revised AXOGEN SOP for a process improvement that materially reduces [**], the base fee will be reduced [**].

   Any process changes involving material changes in technical methods, supplies, equipment or product quality requirements will be subject to mutually agreed upon incremental adjustments.

2) [**].

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

**LIFENET HEALTH Initials and Date:** GB 2/26/08 **AXOGEN Initials and Date:** JMG 2/27/08

**APPENDIX C**

**CONFIDENTIALITY AGREEMENT**

***[See Attached]***

**LIFENET HEALTH Initials and Date:** GB 2/26/08 **AXOGEN Initials and Date:** JMG 2/27/08

**Exhibit 10.4.2**

**Confidential treatment requested under 17 C.F.R. §§ 200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.**

**SECOND AMENDMENT TO AMENDED AND RESTATED NERVE TISSUE PROCESSING AGREEMENT**

THIS SECOND AMENDMENT ("Second Amendment") to the Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, as amended on June 27, 2008 ("Amendment"), entered into by and among LifeNet Health ("LifeNet") and AxoGen Corporation (the "Agreement"), is entered into between the parties on August 9, 2011 ("Effective Date").

WHEREAS, the parties wish to amend the Agreement under the terms and subject to the conditions set forth in this Second Amendment;

In consideration of the mutual promises contained herein, the parties agree to the following:

1. The parties agree that Appendix B to the Agreement is hereby deleted in its entirety and replaced with the attached Appendix B.
2. The parties hereby agree that the fee schedule set forth in the attached amended Appendix B shall be retroactively effective to the last two operational weeks in December 2010.
3. This Second Amendment may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.
4. This Second Amendment was drafted by all parties concerned and thus any rule of contract interpretation calling for documents to be construed against the drafter shall not apply to the construction of this Second Amendment.
5. The Parties confirm and acknowledge that the Agreement is in full force and effect, that there have been no uncured events of breach to date, and that each represents and warrants to the other that they are in material compliance with the Agreement. Except for the changes made by this Second Amendment to the Agreement and the Amendment, the Agreement remains in full force and effect without modification.

IN WITNESS WHEREOF, the parties execute this Second Amendment as of the dates written below.

| LIFENET HEALTH | AXOGEN CORPORATION |
|---|---|
| By: /s/ Gordon Berkstresser | By: /s/ John P. Engels |
| Title: CFO | Title: Vice President |
| Date: 08/10/11 | Date: 08/10/11 |

**APPENDIX B**

**FEE SCHEDULE**

1) **AXOGEN** shall pay **LIFENET HEALTH [**]**.

2) [**].

3) **LIFENET HEALTH** shall bill **AXOGEN** [**].

4) **LIFENET HEALTH** shall bill **AXOGEN** [**].

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

**Exhibit 10.5**

**Confidential treatment requested under 17 C.F.R. §§ 200.80(b)(4) and 230.406. The confidential portions of this exhibit have been omitted and are marked accordingly. The confidential portions have been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.**

# DISTRIBUTION AGREEMENT

This Distribution Agreement ("***Agreement***") is entered into this 27th day of August, 2008 ("***Effective Date***"), by and between Cook Biotech Incorporated, an Indiana corporation having a place of business at 1425 Innovation Place, West Lafayette, Indiana 47906 ("***Cook***"), and AxoGen, Inc, a Delaware corporation having a place of business at 13859 Progress Blvd, Alachua, FL, 32615 ("***Distributor***").

## Recitals

1. Cook is engaged in the business of designing, developing and manufacturing products, including the Product.
2. Distributor is engaged in the business of developing, manufacturing and marketing nerve repair products and desires to exclusively import, distribute, and commercialize the Product in the Field within the Territory.

In consideration of the mutual covenants contained herein, the parties agree as follows:

## ARTICLE I—Appointment

A. Cook appoints Distributor, and Distributor accepts the appointment, as the exclusive independent distributor for Cook with the exclusive right to import, sell, market, advertise, promote and distribute the Product in the Field, throughout the world ("***Territory***"). "***Product***" means extra cellular matrix ("***ECM***") technology, including but not limited to Small Intestinal Submucosa ("***SIS***") technology: (i) in the form of the Surgisis™ Nerve Cuff and any changes, improvements or modifications thereto owned or controlled by Cook; (ii) in the form of a nerve wrap or patch, and any changes, improvements or modifications thereto owned or controlled by Cook; or (iii) in the form of any such other configurations agreed by the parties during the Term to be added to this Agreement in accordance with Article XIV(B) below. The Product also includes such other products that the parties may elect during the Term to add to this Agreement in accordance with Article XIV(B) below. "***Field***" means use of the Product in the peripheral nervous system and the central nervous system, and expressly excludes use of the Product in the oral cavity for endodontic and periodontal applications and oral and maxillofacial surgery solely as they relate to dental, soft or hard, tissue repair or reconstruction. Distributor shall purchase the Product from Cook as an independent distributor or contractor.

B. Cook reserves the right to appoint one or more distributors to sell the Product within the Territory outside the Field, and may itself distribute the Product within the Territory outside of the Field, acting directly or through any of its Affiliates. Notwithstanding the foregoing, Cook shall not itself, through its Affiliates or through third parties import, distribute, use, commercialize the Product in the Field.

C. Should Distributor fail to meet its obligations under this Agreement and fail to cure such failure within one hundred twenty (120) days of Cook's written notice specifying such failure in reasonable detail, in addition to all other rights and remedies of Cook under this Agreement, Cook may itself, acting directly or through any of its affiliates and/or by appointment of one or more additional distributors, sell the Product in the Field within the Territory. In the event that Cook appoints additional distributors, Distributor's appointment under Section I (A) above as the exclusive independent distributor shall automatically become non-exclusive and Distributor shall not be entitled to compensation, indemnification, or monetary or non-monetary relief for lack of exclusivity under the laws of any

country or otherwise by virtue of Cook's appointment of additional distributors in Field within Territory.

## ARTICLE II—Representations and Warranties of Distributor

To induce Cook to enter into this Agreement, Distributor represents and warrants to Cook that Distributor:

(i) is a legal entity duly organized and existing under the laws of the State of Delaware, and has full power, authority, and legal right to perform and observe the terms and conditions of this Agreement;

(ii) at its sole expense, has obtained and throughout the Term will maintain all governmental and statutory permits, licenses, approvals (not including the Regulatory Approvals set forth in Article IV(D)), registrations and certificates and shall satisfy all governmental and other statutory requirements necessary for the importation, transport, sale, marketing, advertising, promotion and distribution of the Product in the Field within those countries in the Territory where Distributor shall distribute the Product (collectively "***Governmental Approvals***");

(iii) shall register itself in those countries within the Territory as Cook's distributor if required by law in such countries;

(iv) shall satisfy and comply with, and shall cause its agents, employees, contractors and sub-distributors to comply with, all Governmental Approvals and all laws, rules and regulations of each country within the Territory where Distributor distributes Product;

(v) shall not incur any liability on behalf of Cook or attempt to pledge Cook's credit, or describe or represent itself as Cook's agent or legal representative; and

(vi) shall not intervene or instigate any intervention with Cook's authority to appoint other distributors within the Territory as provided in this Agreement.

## ARTICLE III—Obligations of Distributor

During the Term, Distributor at its own expense shall:

(i) not agree with or consent to any modification of the Product without the prior written consent of Cook;

(ii) provide Cook, upon request and in a timely manner, with the opportunity to review copies of documents issued or received in connection with obtaining, maintaining or complying with the Governmental Approvals, but only to the extent such documents relate to Distributor's obligations under this Agreement;

(iii) use its commercially reasonable efforts to promote, solicit, and expand the sale of the Product within the Field in the Territory, and use its commercially reasonable efforts to not promote or solicit the sale of the Product for use outside of the Field unless agreed by the parties;

(iv) immediately cease the sale or distribution of the Product to any person or entity who Distributor has actual knowledge of purchasing the Product for use or distribution to a third party outside

the Field;

(v) during normal business hours upon reasonable notice allow a certified public accountant representing Cook, and reasonably acceptable to Distributor and who enters into a reasonable confidentiality agreement with Distributor, to visit the offices of Distributor to inspect books and records directly related to Distributor's activities hereunder in sufficient detail to verify compliance by Distributor with its obligations under this Agreement. For clarity, such accountant shall only provide Cook with an assessment of whether Distributor has met its obligations and if not, the extent of such noncompliance;

(vi) submit a report to Cook once per calendar year, presenting such information related to the Product and its distribution in sufficient detail to verify compliance by Distributor with its obligations under this Agreement, including but not limited to Governmental Approvals, in a format to be mutually agreed upon by the parties;

(vii) immediately inform Cook in writing of, and render such reasonable assistance to Cook, at Cook's sole expense, including all internal and external costs associated with the following, as Cook may reasonably request in connection with the investigation and resolution of, all complaints, adverse experience or vigilance reports, warranty claims, other claims and other feedback made by customers or governmental authorities in connection with the Product;

(viii) not make any warranty with respect to the performance or efficacy of the Product other than the warranties under Article VI;

(ix) maintain records which identify all purchasers of the Product to the extent Distributor deems it possible to do so. Such records, to the extent commercially reasonable, shall include the name, address and telephone number of the purchaser, the type and quantity of the Product sold to such purchaser, the date the Product was sold, the lot number of the Product sold, and the amount billed and received from such purchaser of the Product. All such records shall be maintained so that they can reasonably be made accessible to Cook solely upon an adverse event or recall order and such shall remain available for such purposes to Cook in case of expiration or termination of this Agreement, for a period of six (6) months following the expiration or termination of this Agreement. All of the items noted above shall be maintained and provided to the extent permissible by applicable laws and under Distributor's confidentiality obligations to third parties under agreements existing on the Effective Date of this Agreement;

(x) handle and store or warehouse all the Product in a manner that can reasonably be expected to prevent both (a) contamination or physical damage to the Product, and (b) any adverse effect to the Product caused by light, temperature or humidity, Distributor shall with the cooperation of Cook establish written procedures for warehouse control and distribution of Product to assure that environmental conditions are controlled, that the oldest Product kept in storage shall be distributed first, and that separate lots of Product shall be kept separately, according to lot numbers. All records shall be maintained by Distributor so that they are reasonably accessible to Cook for inspection in accordance with terms of this Agreement. Distributor shall segregate all Product it is storing from any product manufactured or sold to it by third parties;

(xi) cooperate with Cook in connection with any hold, stop distribution or recall order issued in connection with the Product in Distributor's control;

(xii) maintain product liability, general public liability, employment, and property damage insurance against any claim or claims relating to the Product that may be asserted in connection with Distributor's marketing, handling and distribution of the Product, in amounts reasonably acceptable to Cook and naming Cook as an additional insured. Distributor shall deliver to Cook an insurance certificate demonstrating the foregoing coverage upon Cook's reasonable request;

(xiii) comply with all applicable laws, rules and regulations of each country within the Territory where Distributor distributes the Product, including (a) the United States federal anti-kickback statute (42 U.S.C. §1320a-7(b)) and the related safe harbor regulations, and (b) the Limitation of Certain Physician Referrals, also referred to as the "Stark Law" (42 U.S.C. § 1395nn);

(xiv) not directly or indirectly use any payments, discounts, or other benefits received from Cook or any proceeds derived from the sale or distribution of Product to make any payment or political contribution to an agent, employee, or representative of any foreign government, foreign governmental agency, or other organization directly or indirectly owned or controlled by any foreign government in compliance with the US Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.)

(xv) Distributor will comply with all applicable regulatory laws, rules and requirements of the regulatory authorities of the Territory in which Distributor markets and sells Product, including but not limited to those concerning traceability, reporting and record keeping (e.g. complaints, adverse reactions, recall information). Distributor will promptly report to Cook in writing any Adverse Events of which Distributor becomes aware. Distributor will provide to Cook information in its possession regarding the adverse event for Cook to perform expedited and periodic reporting of Adverse Events to the applicable governmental authority. At Cook's request, Distributor will provide Cook with copies of all relevant information in its possession to report Adverse Events.

## ARTICLE IV—Representations and Obligations of Cook

A. Cook shall provide Distributor with prompt written notice of any proposed change, improvement or modification that may require the approval of the FDA or a similar regulatory agency in any other jurisdiction within the Territory that Cook plans to incorporate in the Product and of the anticipated effect thereof on performance. Cook shall not incorporate any change, improvement or modification that would require approval of, or that would reasonably be expected to require the approval of, any applicable governmental regulatory authority in the Territory (including the FDA) or that would reasonably be expected to affect the end-user customer's perception of the Product without written consent of Distributor which consent shall not be unreasonably withheld.

B. During the Term, Cook shall exclusively sell the Product to Distributor for sale and distribution in the Field in the Territory and subject to the terms and conditions of this Agreement, but retains the right to sell the Product itself or through third parties, in each case outside the Field.

C. Cook shall be responsible for all processing of information related to any Adverse Events, including, without limitation, any information regarding such Adverse Events that is forwarded by Distributor from a third party, related to the Product and for all expedited and periodic reporting of such events to the FDA or other applicable governmental authority in the Territory in accordance with all applicable laws and regulations. For purposes of this Agreement, "Adverse Events" means any adverse event associated with the use of the Product in humans. It includes an adverse event occurring in the course of

the use of a Product in professional practice, in studies, in investigations or in tests. It also includes an adverse event occurring from Product misuse (whether accidental or intentional), from Product abuse, or from Product rejection, as well as any toxicity, sensitivity, failure of expected therapeutic effect, or laboratory abnormality which is or is thought by the reporting party to be serious or associated with relevant clinical signs or symptoms.

D. During the Term, Cook shall: i) maintain in its own name and at its own expense, the Regulatory Approvals that Cook has obtained as of the Effective Date for the Product in the United States, and file, update, or revise in its own name and at its own expense, Regulatory Approvals required for changes, modifications, improvements made to the Product, in the United States ("***Initial Countries***"); and ii) be responsible, at its sole expense, for filing, obtaining and maintaining the Regulatory Approvals required for the manufacture, transport, and sale of the Product in each of the countries listed on Exhibit C to this Agreement, unless otherwise agreed by the parties for any particular Product, and in any other country within the Territory that the parties agree in writing that Distributor should sell a form of the Product, according to a commercially reasonable timetable agreed to by the parties in writing. Notwithstanding anything herein, Cook shall agree to add a country in the Territory upon Distributor's request if sales of Product is commercially reasonable. Distributor agrees to use reasonable efforts to assist Cook in obtaining Regulatory Approvals as and when needed. Such Regulatory Approvals shall be sought and obtained by Cook in Cook's own name and shall be owned by Cook. "***Regulatory Approval***" shall mean the approval, and all governmental permits or other administrative law prerequisites necessary or desirable in obtaining the approval, required by the FDA, or the equivalent agency or governmental authority in any national jurisdiction, for commercial sale of the Product in the Field in a given country, including but not limited to, any pre-clinical and clinical trials. In addition to Cook's conformance to the requirements of Regulatory Approval of Product, Cook shall comply with all applicable regulatory requirements of the FDA or the equivalent regulatory authority in any jurisdiction in the Territory governing the processing and distribution of the Product in the Field in the Territory during the Term of this Agreement.

E. Cook shall indemnify Distributor for any third party claims against Distributor to the extent such claims are based on the sale of the Product to, or for the ultimate use or benefit of, customers within the Field and Territory by distributors other than Distributor which Cook directly or indirectly authorizes to promote, market, solicit, or undertake the sale of the Product. Where Cook appoints additional distributors for the Product, other than pursuant to Section I(C), Cook shall compensate Distributor for a reasonable profit on its lost sales of the Product during the Term due to sales to customers within the Field and Territory by other distributors that Cook directly authorizes to promote, market, solicit, or undertake the sale of the Product; provided that as soon as Axogen becomes aware of any such other distributor, Axogen provides Cook with prompt notice of such other distributor together with any evidence of such sales in the Field and Territory by such distributor that it may have and a ninety-(90) day period in which to cure. Entities that sell, resell or otherwise transfer Product ultimately supplied to Distributor shall not be considered a "distributor" with respect to such acts.

F. In the event that a Product is alleged to infringe, or is determined by an appropriate judicial body to infringe, a valid and enforceable claim of a third-party patent in a given country in the Territory, then Cook will use commercially reasonable efforts, at its own expense, to (i) procure the right to continue to provide Distribution with respect to such Product in such country; (ii) replace such alleged or actual infringing Product with a functionally similar non-infringing Product; or (iii) modify such alleged or actual infringing Product in a manner that results in a non-infringing Product. The choice among clauses (i-iii) shall be made by Cook in its sole discretion, however, to the extent that Distributor elects to share in such expenses, Cook agrees to give good faith consideration to other reasonable proposals by Distributor to remedy the alleged infringement. Notwithstanding the foregoing, nothing in this

Agreement is to be construed to prevent Cook from reducing or withdrawing any or all of the Product from manufacture and/or commercialization and/or terminating this Agreement with respect to such Product in any country within the Territory based on an allegation or a judgment that such Product infringes a third party patent.

G. Cook agrees to undertake and to cause its suppliers, if any, to undertake such quality control and inspection procedures as required by the FDA ("***Quality Plan***"). Cook will, upon written request of the Distributor, share its Quality Plan with the Distributor prior to delivery of the initial product order and on an annual basis thereafter. Distributor shall have the right (at its expense) from time to time, but no more frequently than once a calendar year, and upon reasonable advance written request and during normal business hours, to inspect the facilities of Cook and any manufacturing facilities, storage/handling facilities and any other facilities or entities used by Cook or third parties on behalf of Cook for the supply, manufacture and storage of the Product to review their compliance with the requirements of Section 351 of the Public Health Services Act that apply to the Product and all other applicable laws and regulations for such Product in the United States or comparable laws and regulations of foreign regulatory authorities for countries in which the parties have agreed hereunder that Cook should sell Product; provided, however, if during the course of any such inspection Distributor determines that Cook is not in compliance with the requirements of the Quality Plan, including but not limited to compliance with Section 351 of the Public Health Services Act that apply to the Product or any other applicable laws and regulations that apply to the Product or comparable regulations of foreign regulatory authorities for countries in which the parties have agreed hereunder that Cook should sell Product (a "***Non-Compliant Item***"), Distributor shall be permitted to perform such additional inspections within a calendar year as are required for the sole purpose of confirming that Cook has corrected and is then in compliance with any Non-Complaint Item discovered in Distributor's immediately preceding inspection. Any information that Distributor learns in the course of such inspections shall be deemed the Confidential Information of Cook, subject to Distributor's confidentiality obligations hereunder, may be used by Distributor for the sole purpose of ensuring compliance by Cook with its obligations under this Article IV(G), and may not be otherwise used or disclosed by Distributor without the prior written consent of Cook. Cook shall not be required, in the course of such inspections to reveal any trade secrets to Distributor. Distributor agrees to work with Cook in order to assist its compliance with Section 351 of the Public Health Services Act as it applies to the Product and other applicable laws and regulations.

H. Cook, at its own expense, and upon Distributor's written request, shall provide Distributor with the materials and services described below in the English language, and, if available, in other applicable languages:

(i) technical advice relating to the use of Product;

(ii) manage, with Distributor's cooperation and assistance (such cooperation to be provided by Distributor at no charge to Cook), customer complaints, including but not limited to, complaints regarding manufacturing, design, packaging, and shipment (for shipment from Cook to Distributor) problems, including Adverse Events; and

(iii) reasonable quantities of representative samples as reasonably required for meetings within the Territory, including demonstration samples for meetings attended by physicians in which Product is demonstrated to the physicians by or for the Distributor.

Distributor shall assume sole responsibility, at Distributor's cost, for translating said materials into languages other than English spoken in the Territory ("***Language***") and Distributor shall provide copies

of all translations of all such material to Cook at a reasonable charge sufficient to cover Distributor's reasonable reproduction and mailing expenses incurred in providing such materials to Cook. Distributor acknowledges that all rights, including without limitation copyrights, subsisting in the translations shall be the sole property of Cook.

I. To induce Distributor to enter into this Agreement, Cook represents and warrants to Distributor that Cook:

(i) is a legal entity duly organized and existing under the laws of the State of Indiana, and has full power, authority, and legal right to perform and observe the terms and conditions of this Agreement;

(ii) at its sole expense, has obtained and throughout the Term will maintain all governmental and statutory permits, licenses, approvals, registrations and certificates and shall satisfy all governmental and other statutory requirements necessary for the manufacture of the Product by Cook in the United States and the delivery of the Product to Distributor in the United States for use in the Field;

(iii) shall satisfy and comply with, and shall cause its agents, employees, contractors and sub-distributors to comply with, all Governmental Approvals and all laws, rules and regulations of each country within the Territory where Distributor and Cook agree in writing that Distributor shall distribute the Product; and

(iv) shall not incur any liability on behalf of Distributor or attempt to pledge Distributor's credit, or describe or represent itself as Distributor's agent or legal representative.

## ARTICLE V—Orders, Prices Forecasts and Minimum Purchases

A. Distributor shall submit all orders for the Product to be purchased by Distributor directly to Cook in writing and Cook shall be bound to accept any such order unless such order does not comply with this Agreement, such non-compliance including but not limited to, a case in which the parties have not agreed in writing on the Specifications (as defined in Section A of Article VI) of the Product in Exhibit B, as set forth in Section V(F) below).

B. Cook shall sell the Product to Distributor per pricing listed in Exhibit "A" ("Purchase Price"). Upon thirty (30) days written notice to Distributor, Cook may adjust the price of the Product during the Term to reflect [**]. In no event shall Cook make such an adjustment more than once in any given twelve month period, and [*]. If Cook claims a Greater Increase Condition exists, Distributor may audit the claimed Greater Increase Condition in the following manner: During normal business hours upon reasonable notice Cook will allow a certified public accountant representing Distributor and reasonably acceptable to Cook and who enters into a reasonable confidentiality agreement with Cook, to visit the offices of Cook to inspect books and records directly related to the Greater Increase Condition in sufficient detail to verify the existence of the Greater Increase Condition. In the event the claimed Greater Increase Condition is shown not to exist, Cook will reimburse Distributor for the reasonable cost of such audit and the Purchase Price will not be adjusted for the claimed Greater Increase Condition. "Consumer Price Index" means the consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor or any successor agency that assumes responsibility for the preparation of such index. Nothing contained in this Agreement shall preclude Distributor from setting its own resale price.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

C. Cook shall pack the Product with regularly used packing material, shall label the Product in accordance with Distributor supplied label content and formatting conforming to governmental regulation, and shall ship the Product to Distributor in finished packaged form ready for sale to end-users, DDP (Incoterms 2000) AxoGen's facility in the United States. Title to the Product shall pass to Distributor when delivered to AxoGen's facility in the United States pursuant to the terms set forth above.

D. Distributor shall pay Cook for the Product net thirty (30) days from the date of the receipt of proper invoice for the Product where such invoice shall be delivered along with the relevant shipment of Product. Cook shall pay all shipping charges, taxes, fees, levies and other payments or charges (and any related interest and penalties) required in connection with the sale, transfer of ownership and importation, excluding duty, of the Product. Distributor shall pay all costs associated with duty, distribution, marketing and resale of the Product ("***Fees***").

E. All payments by Distributor shall be made in United States dollars at the address of Cook hereinafter specified or such other place as Cook may designate from time to time, or by wire transfer to the bank account which Cook may indicate in writing. At Cook's sole discretion, any undisputed amount not paid by Distributor within thirty (30) days from the date of the receipt invoice shall bear interest at the rate of prime (as established by *The Wall Street Journal, Eastern Edition*) per annum or at such lesser rate equal to the highest legal rate permitted by the laws of the Territory from the date when payment was due until the date of complete payment.

F. Commencing after a Product development review period not to exceed one-hundred-eighty (180) days from the Effective Date in which the parties shall agree in writing on the Specifications (as defined in Section A of Article VI) of the Product in Exhibit B, and on or about the first day of each month thereafter throughout the Term, Distributor shall provide to Cook in writing a forecast of Distributor's estimated requirements for quantities of the Product for the next succeeding twelve (12) month period ("***Long Range Forecast***"). The forecast for the first three (3) months of the Long Range Forecast, shall be deemed a binding obligation on the parties ("***Binding Forecast***"), provided, that Cook shall have the right to reject any portion of the Binding Forecast that exceeds the Binding Forecast for such month previously provided in the Long Range Forecast. Along with the written Long Range Forecast provided to Cook under this Article V(F), Distributor shall issue purchase orders to Cook for the quantities of the Product specified in the Binding Forecast. In no event shall Cook be obligated to (a) accept an order for a quantity of the Product for any single month which is in excess of two hundred percent (200%) of the forecast for such month set forth in the immediately preceding Binding Forecast, or (b) deliver to Distributor in any three (3) month period greater than One Hundred Fifty Percent (150%) of the quantity of the Product set forth in the Binding Forecast for that period. Notwithstanding the foregoing, Cook shall use commercially reasonable efforts to deliver quantities of the Product ordered by Distributor in excess of the Binding Forecast during the Term. In the event Distributor purchases less than the Binding Forecast quantity, and Cook has manufactured such quantity, in any calendar month during the Term, then, Distributor shall pay Cook an amount equal to the difference between the Purchase Price for the Product actually purchased by Distributor in such month and the Purchase Price for the Binding Forecast quantity for such month and Cook shall deliver the quantity of the Product corresponding to such payment to Distributor.

G. During each twelve (12) month period during the Term commencing after July 1, 2009 ("***Year"***), Distributor shall purchase a minimum quantity of the Product from Cook at the Purchase Price set forth on **Exhibit A**, which minimum quantity shall be agreed upon by the parties within one (1) year from the Effective Date and which may be adjusted from time to time upon prior written agreement of the parties ("***Minimum Quantity***").

H. In the event Distributor fails to purchase the Minimum Quantity in any Year, and such failure is not due to Cook's inability to supply the Product to meet the Minimum Quantity or any other reasonable factor outside the control of Distributor, Cook shall notify Distributor of such failure and Distributor, within thirty (30) days of receipt of such notice, shall pay Cook, as a remedy for Distributor's default, and not as a penalty, fifty percent (50%) of the difference between the purchase price of the Minimum Quantity and the purchase price of the Product purchased by Distributor during such Quarter and Cook shall deliver the quantity of the Product corresponding to such payment to Distributor. In the event Distributor pays Cook the difference within thirty (30) days after receipt of such notice, Distributor shall no longer be deemed in default under this Agreement. In the event Distributor fails to make such payment within the applicable time period, then Cook, at its option, and in addition to all other remedies available to Cook under this Agreement, may, within thirty (30) days of the end of such period, terminate this Agreement immediately upon written notice to Distributor.

I. Cook shall maintain at its facility for Distributor a minimum of (2) two months inventory of Product based on the Binding Forecast. Cook shall use reasonable efforts to fill Product Orders on a "FIFO" basis from the inventory. In the event Cook fails to fulfill a product order that is a Binding Forecast, in addition to all other remedies available to Distributor, Cook will credit the amount of the shortfall in delivery against the Minimum Quantity of Product that Distributor must purchase for that year.

## ARTICLE VI—Warranties

A. Cook warrants that the Product (i) is manufactured in accordance with all applicable international, national, regional and local laws and regulations (including, but not limited to, jurisdictions in which regulatory approval or clearance for the Product has been obtained ), including, but not limited to, cGMP as established by the United States Food & Drug Administration (ii) is true to label when packaged and delivered to Distributor, (iii) is free from defects in materials and workmanship, (iv) conform to the manufacturing specifications listed in **Exhibit "B"** (***"Specifications"***), and (iv) shall have a minimum shelf life of fourteen (14) months from date of delivery. In addition, Cook warrants that: (x) it has clear and good title to the Product and the Product shall be delivered free of liens and encumbrances, (y) it has the right under Cook's intellectual property to grant the rights hereunder, including the rights to import, sell, market, advertise, promote and distribute the Product in the Field within the Territory, and (z) to the best of Cook's knowledge, as of the Effective Date of this Agreement, the manufacture, use or sale (excluding any method of sale patents) of the ECM technology or SIS technology does not itself infringe any US patent rights of any third party. Cook does not warrant either a good effect or against an ill effect following use of Product. The term of this warranty shall in no event extend beyond the later of (a) the stated expiration date on such Product, or (b) the term of the warranty set forth in Product packaging or inserts or (c) one (1) year from delivery to Distributor.

B. THE WARRANTIES SET FORTH IN ARTICLE (VI)(A) ABOVE ARE EXCLUSIVE AND IN LIEU OF AND SHALL SUPERSEDE ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COOK ACKNOWLEDGES THAT THE IMMEDIATELY PRECEDING SENTENCE DOES NOT RESTRICT OR REMOVE WARRANTIES THAT EXPRESSLY MAY NOT BE RESTRICTED OR REMOVED BY OPERATION OF LAW. NO REPRESENTATIVE OF COOK MAY ORALLY CHANGE ANY OF THE FOREGOING AND DISTRIBUTOR ACCEPTS THE PRODUCT SUBJECT TO THE TERMS HEREOF.

C. Except as provided for in Article XIII(B), Distributor's sole and exclusive remedy for any Claim is replacement of any nonconforming Product. "***Claim***" means any cause of action arising by reason of or in connection with this Agreement, or the sale, importation, distribution, purchase, delivery or use of the Product, regardless of whether such claim is based on tort law, breach of contract, breach of warranty or any other legal or equitable theory. Under no circumstances shall Cook be liable for loss of use, lost profits or any other collateral, special, consequential, punitive or other damages, losses, or expenses in connection with or by reason of any Claim. Any lawsuit asserting any Claim by Distributor against Cook must be brought within one (1) year and one (1) day after shipment of the alleged non-conforming the Product to Distributor or such Claim shall be forever barred; provided, that such one (1) year and one (1) day period shall not apply to latent defects which could not be discovered in such period.

D. Cook's warranty obligations shall apply only to Product manufactured or distributed by Cook, and under no circumstances shall extend to Product manufactured and/or distributed by third parties. The only warranties applicable to Product manufactured and/or distributed by third parties shall be the warranties, if any, of the third-party manufacturer.

E. Cook may request the return of any alleged non-conforming Product in order to substantiate a claim under its warranties, and Distributor, at Cook's sole expense, shall return such Product if Distributor has such Product in its possession or has reasonable access to same.

## ARTICLE VII—Trademarks and Trade Names

A. Distributor acknowledges Cook's exclusive right, title and interest in the trademarks and trade names listed in all catalog and product sheets issued by Cook (collectively "***Trademarks***"), and Distributor shall not at any time do or cause to be done any act or thing which directly or indirectly challenges, impairs or adversely affects the Trademarks or Cook's goodwill therein. Distributor shall not acquire any right, title, or interest in the Trademarks by virtue of the execution, performance or termination of this Agreement. Distributor shall not use any Trademark, without Cook's prior written consent. Any goodwill resulting from Distributor's use of the Trademarks shall inure to the benefit of Cook.

B. Except as provided expressly herein, Distributor may not use the Trademarks or Cook's name in connection with the importation, marketing, distribution and sale of the Product. Distributor shall not use or adopt the Trademarks or any confusingly similar word or symbol as part of its company name. Distributor shall submit to Cook for approval, prior to use, distribution, or disclosure of any advertising, promotion or publicity media in which Cook's name or the Trademarks are to be used. The package label for Product processed by Cook and delivered pursuant to this Agreement shall be designed by Distributor and follow applicable laws and regulations including stating "Manufactured by Cook" or variations thereof in small print. Distributor shall be responsible for all costs of repackaging and re-labeling the Product and any revision of the Product brochures and other educational materials, to the extent such repackaging, re-labeling and/or revisions are required due to Distributor Trademark issues that arise with respect to the Product. Cook shall be responsible for all costs of repackaging and re-labeling the Product and any revision of the Product brochures and other educational materials, to the extent such repackaging, re-labeling and/or revisions are required due to Trademark issues that arise with respect to the Product. Notwithstanding the foregoing, Cook shall have the right to review and request the correction or deletion, at Distributor's expense, of any misleading, or false material from any such media. Distributor will be solely responsible, at its sole expense, for, and except as otherwise provided in this Agreement, shall have the sole right to make all decisions and determinations with respect to marketing and sales of the Product in the Field in the Territory, all subject to and in

compliance with all applicable laws and regulations and the terms and conditions of this Agreement.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

C. Cook reserves the right to bring such legal action in the courts or administrative agencies of any country within the Territory as may be required to prevent the infringement, imitation, unauthorized sale, purchase or distribution, illegal use, or misuse of the Trademarks, Cook's name or the Product. Distributor promptly shall notify Cook of any infringement, imitation, unauthorized sale, purchase or distribution, illegal use, or misuse of the Trademarks or the Product which comes to Distributor's attention, and shall render any assistance which Cook may reasonably request in protecting the Trademarks and the unauthorized sale, purchase and distribution of the Product.

D. Cook acknowledges Distributor's exclusive right, title and interest in the trade name that Distributor uses for the Product (provided such trade name does not use or incorporate or adopt any of the Trademarks or Cook's company names or any confusingly similar word or symbol), its trademarks and trade names listed in product sheets issued by Distributor (collectively ***"Distributor Trademarks"***), and Cook shall not at any time do or cause to be done any act or thing which directly or indirectly challenges, impairs or adversely affects the Distributor Trademarks or Distributor's goodwill therein. Cook shall not acquire any right, title, or interest in the Distributor Trademarks by virtue of the execution, performance or termination of this Agreement. Cook shall not use any Distributor Trademark, without Distributor's prior written consent. All goodwill resulting from Cook's use of the Distributor Trademarks shall inure to the benefit of Distributor. Distributor hereby grants Cook a limited license to and shall use the Distributor Trademarks in accordance with Distributor's instructions and in connection only with the package label for Product processed by Cook and delivered pursuant to this Agreement, and any other printed material related thereto. Cook will have no liability under this Agreement for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is due to Distributor's failure to provide clear, timely and reasonable instructions with respect to Cook's use of Distributor's Trademarks in connection with the Product.

## ARTICLE VIII—Sub-distributors

Distributor may, upon the prior written approval of Cook which will not be unreasonably withheld, conditioned or delayed, appoint sub-distributors for the Product, provided all sub-distributors agree in writing to comply with all of material obligations imposed on Distributor under this Agreement; provided however, all orders for Product from sub-distributors shall be submitted to Cook by and through Distributor, who shall be responsible for paying Cook for such Product in accordance with the terms and conditions set forth in this Agreement. No such sub-distribution agreement shall contain any provision which would cause it to extend beyond the terms of this Agreement. Distributor shall give Cook prompt notification of the identity and address of each sub-distributor with whom it concludes a sub-distribution agreement and shall supply Cook with a copy of each such agreement.

## ARTICLE IX—Confidentiality

A. "***Confidential Information***" of a Disclosing Party (defined below) shall mean all data, specifications, marketing materials, formulae, records, sales manuals, customer lists, mailing lists, letters, technical documents, brochures, price lists and all other material, with respect to the Product and whether written, oral or electronic, provided to or obtained by the Receiving Party (defined below) or an Affiliate (defined below) of the Receiving Party relating to the Disclosing Party or an Affiliate of the Disclosing

Party, provided that Confidential Information shall not include: (a) such information which was lawfully in the Receiving Party's possession or control prior to the time such information was disclosed to it by the Disclosing Party, (b) such information that was developed by the Receiving Party without the Receiving Party having access to such information, (c) such information which was lawfully obtained by the Receiving Party from a third party under no obligation of confidentiality to the Disclosing Party , (d) such information which was at the time it was disclosed or obtained by the Receiving Party, or thereafter became, publicly known otherwise than through a breach by the Receiving Party of its obligations to the Disclosing Party, (e) is independently developed by the Receiving Party as evidenced by contemporaneous written documentation, or v) is required by law or regulation to be disclosed (including, without limitation, in connection with FDA or CE Mark filings), provided that the Receiving Party uses reasonable efforts to notify the Disclosing Party to provide an opportunity to restrict its disclosure and to obtain confidential treatment, or vi) is disclosed to auditors as part of a quality control or similar audit. ***"Affiliates"*** shall mean any person or entity controlled by, controlling, or under common control with a party, "control" shall refer to (i) the possession, directly or indirectly, of the power to direct the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, directly or indirectly, of at least thirty percent (30%) (or, if less, the maximum ownership interest permitted by law) of the voting securities or other ownership interest of a person (Affiliates of Cook shall include, but not necessarily be limited to, Cook Group Incorporated). During the Term of this Agreement and for a period of three (3) years after its expiration or termination, the Receiving Party shall: (i): not at any time disclose Confidential Information of the Disclosing Party to any person or entity without the Disclosing Party's prior written approval, and (ii) use the Confidential Information of the Disclosing Party only to carry out its obligations under this Agreement and for the benefit of the Disclosing Party.

B. Notwithstanding the foregoing, a party ("***Receiving Party***") may disclose Confidential Information without the other party's ("***Disclosing Party***") prior written approval to the Receiving Party's employees and sub-distributors who must know the same for purposes of fulfilling such party's obligations under this Agreement; provided, however, that each party shall cause all such employees, affiliates and sub-distributors to comply with the provisions of this Article IX. Upon the request of the Disclosing Party, the Receiving Party, at its sole cost and expense, diligently shall pursue any claim, action in law or equitable remedy necessary to enforce the foregoing obligation, or obtain damages for breach of the foregoing obligation by any third party. All such damages obtained for breach of the foregoing obligations shall be paid to the Disclosing Party.

C. Upon request of the Disclosing Party or in the event of expiration or termination of this Agreement for any reason, the Receiving Party shall promptly return to the Disclosing Party all Confidential Information.

## ARTICLE X—Term, Expiration and Termination; Survival of Provisions

A. The term of this Agreement commences on the Effective Date and continues in full force and effect for a period of (7) seven years thereafter unless extended by mutual agreement of the parties or earlier terminated in accordance with this Article X ("***Term***").

B. Either party may terminate this Agreement, effective immediately, without demand or judicial resolution, upon written notice to the other party, in the event of any of the following:

(i) a breach of any obligation to pay money under this Agreement, unless such obligation is disputed in good faith by the non-paying party, which breach is not cured within thirty (30) days after receiving written notice of such breach from the non-breaching party;

(ii) a breach of any non-monetary representation or warranty or obligation contemplated in this Agreement, which breach is not cured within sixty (60) calendar days after receiving written notice of such breach from the non-breaching party;

(iii) the other party's inability to pay its debts as the same become due; any assignment by the other party for the benefit of its creditors; the appointment of a receiver, liquidator, or committee of creditors for all or substantially all of the other party's business or assets; the filing of a petition for voluntary or involuntary bankruptcy or similar proceeding by or against the other party or the liquidation of the other party;

(iv) the expropriation, confiscation, or nationalization of all or substantially all of the other party's business or assets;

(v) on a country-by-country basis, the introduction of any bill in the legislature of any national or governmental subdivision or the passage or issuance of any provision, statute, decree, order, notice, rule or document having the force of law within any country within the Territory granting independent sales representatives, distributors, or dealers the right to receive extra contractual indemnification from principals upon the latter's termination or refusal to renew applicable agreements between the parties; or

(vi) on a country-by-country basis, any change in the law which restricts, limits or prohibits the importation, sale, marketing or distribution of Product.

C. Distributor may terminate this Agreement, without cause, at any time upon sixty (60) days prior written notice of termination to Cook. Cook may terminate this Agreement at any time upon written notice to Distributor with respect to any Product in any and all countries within the Territory based on: i) a third party allegation or a judgment issued by a court of proper jurisdiction that such Product infringes a third party patent not licensed to Distributor in a country where such Product is being marketed, provided, that such termination shall not terminate Cook's obligations pursuant to Section F of Article IV; or ii) in the event that the parties fail to reach an agreement as to Minimum Quantities under Article V(G), Distributor's failure to generate commercially reasonable sales of Product as measured by sales similar to a competitive product at the same stage in its commercial launch as verified by a mutually acceptable third-party.

## ARTICLE XI—Consequences of Expiration or Termination

A. On expiration or termination of this Agreement for any reason, all rights granted herein to Distributor and sub-distributors, if any, hereunder will immediately cease. Upon such expiration or termination, Distributor, at the request and sole expense of Cook but for no additional consideration or remuneration except for any governmental transfer fees, shall assign to Cook or its designee all Governmental Approvals owned or controlled by Distributor that were obtained at Cook's sole expense, to the extent permitted by governmental authority, and/or fully cooperate with Cook at Cook's expense in obtaining any other Governmental Approvals in the name of Cook or its designee.

B. Sections III(ix) and III(xi), and Articles II, IV, VI, VII, IX, XI, and XIV of this Agreement shall survive its expiration or termination.

C. In addition, the following terms and conditions shall survive the expiration or termination of this

Agreement and be continuous obligations of Distributor:

(i) all the Product that is in good and marketable condition that is owned by Distributor, including the inventory held by Cook under Section V(I) of this Agreement, as of the date of expiration or termination may for a period of six (6) months following such expiration or termination be sold by Distributor under the terms and conditions of this Agreement, as if the same were still in full force and effect, provided that such sell-off occurs at Distributor's regular selling price;

(ii) or at Cook's election, all the Product owned by Distributor before or after the effective date of expiration or termination may be resold to Cook for the original net price paid by Distributor, FCA (Incoterms 2000) Cook or such place of business within the Territory as Cook shall designate;

(iii) all Product owned by Distributor as of the date of expiration or termination or acquired by Distributor after termination or expiration shall under no circumstances be sold at a price below the highest price charged by Distributor for such Product immediately prior to the expiration or termination of this Agreement;

(iv) all the Product in Distributor's possession or control which has not been paid for by Distributor shall be shipped to Cook, FCA (Incoterms 2000) Cook or such place of business within the Territory as Cook shall designate;

(v) all catalogs, brochures, promotional literature, films, drawings, specifications, technical documents, sales manuals, customer account lists, invoices, mailing lists, letters, papers, and similar materials relating to the Product and obtained from Cook or Affiliates and in Distributor's possession or control on expiration or termination of this Agreement or received thereafter by Distributor shall be returned to Cook, together with any copies and translations of the same; provided, that Distributor may retain one (1) copy of the same in its legal files and subject to the provisions of Article IX above; and

(vi) neither party shall have any claim against the other party for compensation nor indemnification on account of such party's loss of present or prospective profits from sales or anticipated sales of Product; expenditures, investments, or commitments made in connection with such sales or anticipated sales or the establishment, development, or maintenance of such party's business; including, without limitation, increased good will, profits, sales volume or number of customers to the past, present or future benefit of such other party, or post-expiration or post-termination reorganization, personnel displacement or severance expenses, or any statutory rights to indemnification, damages, or other compensation.

## ARTICLE XII—Notices

A. For purposes of serving notices, requesting approvals, granting authorizations, or transmitting any correspondence related to this Agreement, the addresses of Cook and Distributor shall be the addresses set forth below. Either party may change its address on written notice to the other party.

Cook: Cook Biotech Incorporated
1425 Innovation Place
West Lafayette, IN 47906
Attn: President

Distributor: AxoGen, Inc.
13859 Progress Blvd
Alachua, FL, 32615
Attn: Vice President

Telephone: (765) 497-3355
Telefax: (765) 497-2361

Telephone: (386) 462-6800
Telefax: (386) 462-6801

B. All orders, notices, approvals, and authorizations shall be reduced to writing and shall be personally served on an officer of the other party, sent to the other party via overnight delivery with a reputable overnight delivery service, or transmitted by telefax with a confirmation copy sent via overnight delivery with a reputable overnight delivery service. Notice shall be effective upon receipt or rejection by the receiving party.

## ARTICLE XIII—Indemnification

A. Distributor shall defend, indemnify and hold harmless Cook, its directors, officers, employees, agents and insurers, from and against any and all third party demands, actions, defense of actions, causes of action (whether judicial, administrative or otherwise), losses, claims, damages, judgments, fees, expenses (including without limitation attorneys' fees, interest, penalties, investigative expenses and court costs) and liabilities ("***Claims***") relating to, or caused by, or arising out of or in connection with any one or more of the following:

(i) any statutory laws or regulations or judicial orders or determinations of any country or government subdivision within the Territory or otherwise requiring compensation for severance, disability, or social security payments, or providing for payment or any other compensation to Distributor, its past or present employees, sub-distributors or subrepresentatives or any party associated therewith, as a result of the expiration or termination of this Agreement or any sub-distributor agreement;

(ii) any breach by Distributor of its material obligations, representations, warranties set forth in this Agreement;

(iii) any adulteration of the Product supplied hereunder while in Distributor's possession;

(iv) the negligence or willful misconduct of Distributor or its Affiliates or sub-distributors or their respective officers, directors, employees, agents or consultants in performing any obligations under this Agreement; or

(v) any knowing infringement or misappropriation by Distributor of third party intellectual property rights with respect to the importation, or distribution or sale (other than a simple sale by one of Distributor's employee sales representatives personally selling to a end-user customer) of the Product in the Field in the Territory.

B. Cook shall defend, indemnify and hold harmless Distributor, its directors, officers, employees, agents and insurers, from and against any and all Claims relating to, or caused by, or arising out of or in connection with, without limitation, any one or more of the following:

(i) any breach by Cook of its material obligations, representations or warranties set forth in this Agreement;

(ii) the failure of the Product provided hereunder to conform to the Specifications or to be manufactured in compliance with the Specifications or any applicable laws, including, but not limited to, cGMPs, provided, that such defect or failure did not arise or result from the improper

use, storage, handling of such Product by Distributor;

(iii) any adulteration of the Product supplied hereunder while in Cook's possession;

(iv) any knowing infringement or misappropriation by Cook of any third party intellectual property rights with respect to the manufacture of the ECM technology or SIS technology itself or SIS technology itself or importation, distribution, use or sale of the ECM technology or SIS technology itself, or Cook packaging to the extent such packaging is not specified or supplied by Distributor; or

(v) the negligence or willful misconduct of Cook or its Affiliates or third party manufacturers or their respective officers, directors, employees, agents or consultants in performing any obligations under this Agreement.

provided, however, that the foregoing indemnification obligations shall not apply to the extent that such Claims are caused by action or omission to act of Distributor for which Distributor is required to indemnify Cook under Section XIII(B).

## ARTICLE XIV—Miscellaneous

A. **Waiver**. The failure to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the right to subsequently enforce every provision of this Agreement.

B. **Amendments**. No amendment, modification, or addition to this Agreement shall be binding on the parties unless reduced to writing and duly executed by Cook and Distributor.

C. **Assignments**. Neither Cook nor Distributor may assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, except pursuant to Article VIII. Notwithstanding the foregoing, either party, without the consent of the other party, may assign this Agreement and all of its rights or obligations hereunder to a successor or an Affiliate, or in connection with a merger or sale of all or substantially all of the stock or assets of such assigning party to which this Agreement pertains; provided, that such assignee shall be obligated in writing to assume all of the assignor's obligations hereunder; provided that Distributor may not assign this Agreement, or its rights or obligations hereunder, to Boston Scientific or any of Boston Scientific's affiliates.

D. **Force Majeure**. Neither Cook nor Distributor (except as specifically set forth in Article X(B), subparagraphs (iv), (viii) or (ix) shall be liable for any delay or default caused by force majeure, including, war, revolution, terrorism, rebellion, or riot; fire, flood, storm, or explosion; injunction; act of national government or supra-national agency; or accident of machinery provided the affected party uses every reasonable effort to correct or eliminate the cause preventing performance and to resume performance as soon as possible. The provisions of this Section shall not apply to obligations to pay any monetary amount owing under this Agreement except to the extent that Distributor owes any money to Cook for a failure by Distributor to purchase the Minimum Quantity as a result of Cook's inability to supply the Product.

E. **Severability**. Any provision of this Agreement prohibited by applicable law shall be ineffective to the extent of the prohibition but shall not affect the validity or enforceability of the remaining provisions.

F. **Governing Law**. This Agreement shall be construed exclusively in accordance with the laws of the

State of Delaware, without regard to conflict of laws principles, and shall in no way be subject to the United Nations Convention on Contracts for the International Sale of Goods.

G. **No Agency.** Distributor is an independent contractor and not an agent of Cook for any purpose. Neither party is granted any right or authority to expressly or impliedly assume or create any responsibility on behalf of the other party or bind the other party in any manner.

H. **Governing Language**. All communications, evidences, reports, opinions and other documents delivered under this Agreement, unless submitted in the English language, shall be accompanied by one certified English translation for each copy of the foregoing so submitted, and the English version shall govern in the event of any conflict with the non-English version thereof.

I. **Joint Steering Committee**. Cook and Distributor will form a joint steering committee (JSC) composed of up to three (3) persons from each party to oversee activities under this Agreement. The JSC shall serve in an advisory role and shall have no decision-making authority. The purpose of the JSC will be to facilitate open communication, collaboration and cooperation between the parties and to promote the prompt and reasonable resolution of issues or problems that may arise during the Term of this Agreement. The JSC shall meet quarterly during the Term of this Agreement (in person or by telephone) at such times and places as the parties shall mutually agree. Each party shall be responsible for all travel and related costs incurred by its representatives to attend meetings of, and otherwise participate on, the JSC. Each party shall notify the other party of its representatives on the JSC and shall be free to change its representatives at any time, in its discretion, on notice to the other party**.**

J. **Entire Agreement**. This Agreement, Exhibit A and Exhibit B, which are hereby incorporated by reference, and any other document incorporated into this Agreement by reference shall constitute the entire Agreement between the parties as to the subject matter hereof and supersede all prior oral or written agreements as to such subject matter. No representations other than those contained herein are made by either party to the other.

***Signature Page Follows***

Each of the parties has caused this Agreement to be executed below by its duly authorized representative.

**COOK BIOTECH INCORPORATED**

| | |
|---|---|
| By: | /s/ Mark W. Bleyer |
| Printed: | Mark W. Bleyer |
| Title: | President & CEO |
| Date: | 28 August 2008 |

**AXOGEN, INC.**

| | |
|---|---|
| By: | /s/ Jamie M. Grooms |
| Printed: | Jamie M. Grooms |
| Title: | CEO |
| Date: | September 8, 2008 |

**Exhibit "A"**

Purchase Price:

[**]

Minimum Quantities:

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

**Exhibit "B"**

Specifications*

Initial *"Specifications"* for Products delivered by Cook to Distributor are as follows*:

A [**] SIS shaped in an interrupted or uninterrupted cylindrical tube shape with an open lumen. The current 510(k) allows the device thickness to range from 100 to 1000 micrometers. The device will be available in diameters from [**]. The length of the device is between [**], allowing the physician to trim the device to length if needed.

The current 510(k) INTENDED USE statement is (subject to modification by the parties upon filing of any amendments to the 510k)) :

> "intended for the repair of peripheral nerve discontinuities where gap closure can be achieved by flexion of the extremity. The device is supplied sterile and is intended for one-time use"

*"*Specifications"* shall be modified at the end of the Product Development Review Period not to exceed one-hundred-eighty (180) days from the Effective Date, as contemplated in Article V, Section F.

** Certain information in this exhibit has been omitted and will be filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

**Exhibit "C"**

List any other countries that Cook and Distributor agree Cook will pursue regulatory approval for the Product

**Exhibit 10.6**
**EXECUTION COPY**

# LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (this "**Agreement**"), dated as of September 30, 2011 (the "**Closing Date**") by and among **MIDCAP FINANCIAL SBIC, LP**, a Delaware limited partnership, ("**MidCap**"), as administrative agent ("**Agent**"), the Lenders listed on **Schedule 1** hereto and otherwise party hereto from time to time (each a "**Lender**", and collectively the "**Lenders**"), and **AXOGEN, INC. (f/k/a LecTec Corporation)**, a Minnesota corporation ("**AxoGen Inc**"), and **AXOGEN CORPORATION**, a Delaware corporation ("**AxoGen Corp**"; together with AxoGen Inc, either individually or collectively as the context may require, as "**Borrower**"), provides the terms on which Lenders agree to lend to Borrower and Borrower shall repay Lenders. The parties agree as follows:

## 1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

## 2. LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay to each Lender in accordance with its respective Pro Rata Share, the outstanding principal amount of the Term Loan made by the Lenders, and accrued and unpaid interest thereon, and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loan.

(a) Availability. Subject to the terms and conditions of this Agreement, on the Closing Date, the Lenders agree, severally and not jointly, to make a term loan to Borrower in the aggregate amount of FIVE MILLION AND 00/100 Dollars ($5,000,000.00) according to each Lender's Term Loan Commitment as set forth on **Schedule 1** hereto (the "**Term Loan**"). After repayment, the Term Loan may not be re-borrowed.

(b) Interest Payments and Repayment. Commencing on the first (1st) Payment Date following the Closing Date, and continuing on the Payment Date of each successive month thereafter through and including the Maturity Date, Borrower shall make monthly payments of interest to each Lender in accordance with its respective Pro Rata Share, in arrears, and calculated as set forth in Section 2.3. Commencing on the Amortization Date, and continuing on the Payment Date of each successive month thereafter through and including the Maturity Date, Borrower shall make consecutive monthly payments of principal to each Lender in accordance with its respective Pro Rata Share, as calculated by Agent based upon: (i) the amount of such Lender's Term Loan, (ii) the effective rate of interest, as determined in Section 2.3, and (iii) a straight-line amortization schedule for the Term Loan beginning on the Amortization Date and ending on the Maturity Date. All unpaid principal and accrued interest with respect to the Term Loan is due and payable in full on the Maturity Date. The Term Loan may be prepaid only in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loan is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loan and all other Obligations, and all accrued and unpaid interest thereon, *plus* (ii) the Final Payment, *plus* (iii) the Prepayment Fee, *plus* (iv) all other sums that shall have become due and payable, including Lenders' Expenses.

(d) Permitted Prepayment of the Term Loan. Borrower shall have the option to prepay the Term Loan advanced by the Lenders under this Agreement in whole or in part; *provided, however*, that Borrower (i) provides written notice to Agent of its election to prepay a portion or the entire Term Loan at least ten (10) days prior to such prepayment, and (ii) (x) in the case of a prepayment of the entire Term Loan, pays to each Lender in accordance with its respective Pro Rata Share, on the date of such prepayment, an amount equal to the sum of: (A)

all outstanding principal of the Term Loan and all other Obligations, and all accrued and unpaid interest thereon, *plus* (B) the Final Payment, *plus* (C) the Prepayment Fee, *plus* (D) all other sums that shall have become due and payable, including Lenders' Expenses and, (y) in the case of a prepayment of a portion of the Term Loan, pays to each Lender in accordance with its respective Pro Rata Share, on the date of such prepayment, an amount equal to the sum of: (A) the amount of the outstanding principal of the Term Loan prepaid and all accrued and unpaid interest thereon, *plus* (B) the Partial Final Payment, *plus* (C) the Prepayment Fee, *plus* (D) all other sums that shall have become due and payable, including Lenders' Expenses.

2.3 Payment of Interest on the Term Loan.

(a) Computation of Interest. Interest on the Term Loan and all fees payable hereunder shall be computed on the basis of a 360-day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on the Term Loan, the date of the making of the Term Loan shall be included and the date of payment shall be excluded; *provided, however*, that if the Term Loan is repaid on the same day on which it is made, such day shall be included in computing interest on the Term Loan.

(b) Interest Rate Determination. Subject to the provisions of Section 2.3(c) below, the Term Loan shall bear interest on the outstanding principal amount thereof from the Closing Date until paid in full at a rate per annum equal to nine and nine tenths percent (9.9%).

(c) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum that is five percent (5.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or Lenders.

(d) Debit of Accounts. Any Lender may debit any of Borrower's Deposit Accounts, including the Designated Deposit Account, for principal and interest payments when due or any other amounts Borrower owes the Lenders under the Loan Documents when due. These debits shall not constitute a set-off.

(e) Payments. Payments of principal and/or interest received after 12:00 Noon Eastern Time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

(f) Maximum Lawful Rate. In no event shall the interest charged hereunder, with respect to the notes (if any) or any other obligations of Borrower under any of the Loan Documents exceed the maximum amount permitted under the Laws of the State of Maryland. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any note or other Loan Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable Law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received, had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, then such excess amount shall be applied to the reduction of the principal balance of such Lender's Term Loan or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to

Borrower. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

2.4 Fees and Expenses. Borrower shall pay to each Lender:

(a) Closing Fee. A non-refundable closing fee to each Lender, in accordance with its respective Pro Rata Share, equal to the *product of* (i) one half of one percent (0.50%) *and* (ii) the aggregate Term Loan Commitment on the Closing Date. For clarity, such closing fee was paid by Borrower to Agent, for the benefit of the Lenders, in connection with the execution of the term sheet dated June 17, 2011 between Borrower and Agent;

(b) Final Payment. The Final Payment, when due under Section 2.2(c) or 2.2(d), or otherwise on the Maturity Date, to each Lender, in accordance with its respective Pro Rata Share;

(c) Prepayment Fee. The Prepayment Fee, when due under Section 2.2(c) or 2.2(d), to each Lender, in accordance with its respective Pro Rata Share immediately prior to application of the corresponding prepayment; and

(d) Lenders' Expenses. All of Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Closing Date, when due (and in the absence of any other due date specified herein, such Lenders' Expenses shall be due upon demand).

2.5 Additional Costs. If any new Law or regulation increases a Lender's costs of funds or reduces its income for the Term Loan, Borrower shall pay the increase in cost or reduction in income or additional expense; *provided, however*, that Borrower shall not be liable for any amount attributable to any period before one hundred eighty (180) days prior to the date such Lender notifies Borrower of such increased costs. Each Lender agrees that it shall allocate any increased costs among its customers similarly affected in good faith and in a manner consistent with such Lender's customary practice.

2.6 Payments and Taxes. Any and all payments made by Borrower under this Agreement or any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto) other than any taxes imposed on or measured by any Lender's overall net income and franchise taxes imposed on it (in lieu of net income taxes), by a jurisdiction (or any political subdivision thereof) as a result of any Lender being organized or resident, conducting business (other than a business deemed to arise from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, or otherwise with respect to, this Agreement or any other Loan Document) or having its principal office in such jurisdiction ("**Indemnified Taxes**"). If any Indemnified Taxes shall be required by Law to be withheld or deducted from or in respect of any sum payable under this Agreement or any other Loan Document to any Lender, (a) an additional amount shall be payable as may be necessary so that, after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section) such Lender receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (b) Borrower shall make such withholdings or deductions, (c) Borrower shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with applicable Law, and (d) Borrower shall deliver to such Lender evidence of such payment. Borrower's obligation hereunder shall survive the termination of this Agreement.

2.7 Secured Promissory Notes. Each Lender's Pro Rata Share of the Term Loan shall be evidenced by a Secured Promissory Note in the form attached as **Exhibit D** hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth herein. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Closing Date or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of the Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing

and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower hereunder or under any Secured Promissory Note to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.8 Issuance of Warrants to Lenders. Borrower has duly authorized issuance of the Warrants substantially in the form attached hereto as Exhibit E.

2.9 SBIC Acknowledgement. Borrower acknowledges that Agent is a Federal licensee under the Small Business Investment Act of 1958, as amended.

## 3. CONDITIONS OF LOANS

3.1 Conditions Precedent to the Making of the Term Loan. Each Lender's obligation to make its Term Loan is subject to the condition precedent that Agent shall consent to or shall have received, in form and substance satisfactory to Agent and Lenders, such documents, and completion of such other matters, as Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed original signatures to this Agreement, the Perfection Certificate and the other Loan Documents to which Borrower is a party;

(b) duly executed original Secured Promissory Notes in favor of each Lender with a face amount equal to such Lender's Term Loan Commitment;

(c) a pledge agreement, in substantially the form attached hereto as Exhibit F, executed by each Loan Party and pledging to Agent, for the benefit of itself and the Lenders, a security interest in (i) 100% of the shares of the outstanding capital stock, of any class, of each Subsidiary (as defined below) of each Loan Party that is incorporated under the laws of any State of the United States or the District of Columbia, (ii) shares of the outstanding capital stock of any class of each Foreign Subsidiary that constitute 65% of the total combined voting power of all capital stock of all classes of such Foreign Subsidiary (provided, that with respect to any Foreign Subsidiary, to the extent that there is no material increase in Borrower's federal income tax liability from a pledge or one hundred percent (100%) of such shares of such Foreign Subsidiary, such pledge shall be for one-hundred percent (100%) of such Foreign Subsidiary's outstanding voting and non-voting capital stock and stock equivalents) and (iii) any and all Indebtedness (as defined below) owing to Loan Parties (the "Pledge Agreement");

(d) a duly executed IP Agreement;

(e) duly executed original signatures to the Control Agreements with Silicon Valley Bank;

(f) the Operating Documents of Borrower certified by the Secretary of State of the state of organization of Borrower as of a date no earlier than thirty (30) days prior to the Closing Date;

(g) good standing certificates dated as of a date no earlier than thirty (30) days prior to the Closing Date to the effect that Borrower is qualified to transact business in all states in which the nature of Borrower's business so requires;

(h) duly executed original signatures to the completed Borrowing Resolutions for Borrower;

(i) a payoff letter from Oxford Finance LLC ("Oxford") and Atel Ventures, Inc. ("Atel");

(j) evidence that (i) the Liens securing Indebtedness owed by Borrower to Oxford and Atel in connection with the Existing Senior Indebtedness will be terminated, and (ii) the documents and/or filings

evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the making of the Term Loan, be terminated;

(k) certified copies, dated as of a recent date, of financing statement searches, as Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the making of the Term Loan, will be terminated or released;

(l) an Access Agreement in respect of Borrower's facilities in Alachua, Florida, Columbia, Maryland and Virginia Beach, Virginia;

(m) a legal opinion of Borrower's counsel dated as of the Closing Date together with the duly executed original signatures thereto;

(n) evidence satisfactory to Agent that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Agent, for the ratable benefit of Lenders;

(o) payment of the Closing Fee described in Section 2.4(a) and the Lenders' Expenses described in Section 2.4(d);

(p) duly executed original signature pages to the Warrants;

(q) evidence that, after giving effect to the LecTec Merger and all the transactions contemplated by the LecTec Merger Documents, Borrower shall have unrestricted net cash of not less than Eight Million Five Hundred Thousand and 00/100 Dollars ($8,500,000.00) (which, for the avoidance of doubt, shall not include net cash proceeds obtained in connection with the Additional Equity Transaction) and such cash shall be on deposit in a Collateral Account at Silicon Valley Bank or one of its affiliates subject to a Control Agreement;

(r) evidence that the LecTec Merger will be consummated in accordance with the terms of the LecTec Merger Agreement concurrently with the making of the Term Loan;

(s) evidence that concurrently with the consummation of the LecTec Merger, the Existing Subordinated Indebtedness will be converted to common equity of AxoGen Corp and that the Liens granted in connection with such Existing Subordinated Indebtedness will be released and terminated;

(t) officer's certificate executed by the chief executive officer or the chief financial officer of Borrower, in form and substance satisfactory to Agent, which shall certify as to certain closing conditions and attach certified copies of the final execution versions of the LecTec Merger Agreement and the other LecTec Merger Documents;

(u) completed SBA Forms 480, 652 and 1031 by Borrower;

(v) timely receipt by the Agent of an executed Payment/Advance Form in the form of **Exhibit B** attached hereto;

(w) the representations and warranties in Section 5 shall be true, correct and complete in all respects on the Closing Date; and no Default or Event of Default shall have occurred and be continuing or result from the making of the Term Loan; and

(x) in such Lender's sole discretion, there has not been any Material Adverse Change or any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Agent.

3.2 Covenant to Deliver. Borrower agrees to deliver to Agent each item required to be delivered to Agent under this Agreement as a condition precedent to the making of the Term Loan. Borrower expressly agrees that the making of the Term Loan prior to the receipt by Agent of any such item specifically listed in Section 3.1 shall not constitute a waiver by the Lenders of Borrower's obligation to deliver such item where the Lenders or Agent has provided in writing that such item has not been provided in advance of making the Term Loan, and the making of the Term Loan in the absence of a required item shall be made in Agent's sole discretion.

3.3 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan set forth in this Agreement, to obtain the Term Loan, Borrower shall notify Agent (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern Time 1 Business Day prior to the Closing Date. Together with any such electronic or facsimile notification, Borrower shall deliver to Agent by electronic mail or facsimile a completed Payment/Advance Form executed by a Responsible Officer or his or her designee. Upon receipt of a Payment/Advance Form, Agent shall promptly provide a copy of the same to each Lender. Agent may rely on any telephone notice given by a person whom Agent reasonably believes is a Responsible Officer or designee.

## 4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that may have priority by operation of applicable Law. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower shall promptly notify Agent in a writing signed by Borrower of the general details thereof (and further details as may be required by Agent) and grant to Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Agent.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Agent to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Agent's and each Lender's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Agent and the Lenders under the Code. Such financing statements may indicate the Collateral as "all assets of Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Agent's sole discretion.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows at all times unless expressly provided below:

5.1 Due Organization, Authorization: Power and Authority.

(a) Borrower and each of its Subsidiaries (if any) are duly existing and in good standing, as Registered Organizations in their respective jurisdictions of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of their business or their ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. Borrower represents and warrants that (i) Borrower's exact legal name is that indicated on **Schedule 5.1** and on the signature page hereof; (ii) Borrower is an organization of the type and is organized in the jurisdiction set forth on **Schedule 5.1**; (iii) **Schedule 5.1** accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (iv) **Schedule 5.1** accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); and (v) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction, except as set forth in **Schedule 5.1(a)**. Further, in connection with this Agreement, Borrower has delivered to Agent a completed Perfection Certificate signed by Borrower (the **"Perfection**

**Certificate**"). All other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Closing Date, to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Agent of such occurrence and provide Agent with Borrower's organizational identification number.

(b) The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents; (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law; (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected; (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except (1) such Governmental Approvals which have already been obtained and are in full force and effect, (2) any filings necessary to perfect security interests granted to the Agent for the benefit of the Lenders and (3) filings with the Securities and Exchange Commission); or (v) constitute an event of default under any material agreement by which Borrower or any of its Subsidiaries or their respective properties is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Collateral Accounts. Borrower has good title to, has rights in, and has the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens, except Permitted Liens. Borrower has no Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts with the banks and/or financial institutions listed on **Schedule 5.2(a)**, for which Borrower has given Agent notice and taken such actions as are necessary to grant to Agent, for the ratable benefit of Lenders, a perfected security interest therein.

(b) Accounts. The Accounts are bona fide, existing obligations of the Account Debtors.

(c) Inventory. All Inventory is in all material respects of good and marketable quality, free from material defects, except for Inventory that has expired or is rejected for workmanship or failing to meet processing standards in the ordinary course of business and consistent with past practices.

(d) Intellectual Property and License Agreements. As of the Closing Date and each date thereafter that Borrower is required to deliver an updated **Schedule 5.2(d)** pursuant to Section 6.2(d), a list of all of Borrower's Intellectual Property and all license agreements, sublicenses, or other rights of any Loan Party to use Intellectual Property (including all in-bound license agreements, but excluding over-the-counter software that is commercially available) is set forth on **Schedule 5.2(d)**, which indicates, for each item of property: (i) the name of Borrower owning such Intellectual Property or licensee to such license agreement; (ii) Borrower's identifier for such property (i.e., name of patent, license, etc.), (iii) whether such property is Intellectual Property (or application therefor) owned by Borrower or is property to which Borrower has rights pursuant to a license agreement, (iv) the expiration date of such Intellectual Property or license agreement, and (v) whether such property constitutes Material Intellectual Property. In the case of any Material Intellectual Property that is a license agreement, **Schedule 5.2(d)** further indicates, for each: (A) the name and address of the licensor, (B) the name and date of the agreement pursuant to which such item of Material Intellectual Property is licensed, (C) whether or not such license agreement grants an exclusive license to Borrower, (D) whether there are any purported restrictions in such license agreement as to the ability of Borrower to grant a security interest in and/or to transfer any of its rights as a licensee under such license agreement, and (E) whether a default under or termination of such license agreement could interfere with Agent's right to sell or assign such license or any other Collateral. Except as noted on **Schedule 5.2(d)**, Borrower is the sole owner of its Intellectual Property, except for non-exclusive licenses granted to its customers in the Ordinary Course of Business as identified on **Schedule 5.2(d)**. Each issued patent that is Material Intellectual Property is valid and enforceable and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part

of the Intellectual Property violates the rights of any third party, except to the extent such claim could not reasonably be expected to have a Material Adverse Change.

(e) Location of Collateral. On the Closing Date, the Collateral is located at the address(es) identified on **Schedule 5.2(e)**, and is not in the possession of any third party bailee (such as a warehouse) except as disclosed in **Schedule 5.2(e)**, and as of the Closing Date, no such third party bailee possesses components of the Collateral in excess of Fifty Thousand Dollars ($50,000) or which constitutes Borrower Books. None of the components of the Collateral shall be maintained at locations other than as disclosed in **Schedule 5.2(e)** on the Closing Date or as permitted pursuant to Section 7.2. An Access Agreement has been obtained for all locations which either (i) have a Collateral value in excess of Fifty Thousand Dollars ($50,000) or (ii) contain Borrower's Books, except for the Other Permitted Locations (subject to the requirements set forth in such definition as well as Section 6.13 and **Schedule 6.13**). In the event that Borrower, after the Closing Date, intends to store or otherwise deliver any portion of the Collateral to a landlord, bailee or warehouseman in excess of Fifty Thousand Dollars ($50,000) or which constitutes Borrower Books, then Borrower will first (i) receive the written consent of Agent and (ii) obtain an Access Agreement with respect to such location executed by such landlord, bailee or warehouseman, as applicable.

5.3 Litigation. As of the Closing Date, except as disclosed on **Schedule 5.3** hereto, there are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than One Hundred Thousand Dollars ($100,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Agent fairly present, in conformity with GAAP, in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements and projections submitted to Agent.

5.5 Solvency. As of the Closing Date and each subsequent date on which Borrower brings down the representations and warranties contained in this Agreement, the fair salable value of Borrower's assets (including goodwill *minus* disposition costs) exceeds the fair value of its liabilities. After giving effect to the transactions described in this Agreement, (a) Borrower is not left with unreasonably small capital in relation to its business as presently conducted, and (b) Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance.

(a) Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company", as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any Laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable Laws. Except as set forth in Schedule 5.6, Borrower has obtained all Required Permits, or has contracted with third parties holding Required Permits, necessary for compliance with all Laws except to the extent that such non-compliance does not have a material impact on the business of Borrower and all such Required Permits are current. Except as set forth in Schedule 5.6, Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

(b) None of the Borrower, its Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of

evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. Neither Borrower nor, to the knowledge of Borrower, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities, except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower and its Subsidiaries have timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower, except (i) as set forth in **Schedule 5.8**, (ii) as permitted in the next sentence and (iii) for immaterial local taxes not exceeding ten thousand dollars ($10,000.00) to the extent that Borrower has no knowledge that such tax was due; provided, that, Borrower agrees to comply with the requirements of Section 6.4 upon becoming aware of the existence of such tax. Borrower may defer payment of any contested taxes, *provided, however*, that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could reasonably be expected to result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Term Loan solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term Loan shall be used on the Closing Date to repay in full the Existing Senior Indebtedness.

5.10 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by the Agent and the Lenders that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.11 Regulatory Developments.

(a) All Products sold, marketed, manufactured and commercialized and all Required Permits relating to such Products are listed on **Schedule 5.11** (as updated from time to time pursuant to Section 6.2(e)), and, Borrower has delivered to Agent a copy of all such Required Permits requested by Agent as of the date of this Agreement or thereafter, including to the extent requested by Agent pursuant to Section 6.2(e).

(b) Without limiting the generality of Section 5.6 above and except as set forth in **Schedule 5.11**, with respect to any Product being manufactured by Borrower, Borrower has applied for or received, and such Product is the subject of, all Required Permits needed in connection with the manufacture of such Product, and except as reported to Agent and Lenders in accordance with Section 6.2(f), Borrower has not received any notice from any applicable Governmental Authority, specifically including the FDA, that such Governmental Authority is conducting an investigation or review of (i) Borrower's manufacturing facilities and processes for such Product

which have disclosed any material deficiencies or violations of Laws and/or the Required Permits related to the manufacture of such Product, or (ii) any such Required Permit or that any such Required Permit has been revoked or withdrawn, nor has any such Governmental Authority issued any order or recommendation stating that the manufacturing of such Product by Borrower should cease. As of the Closing Date, no such notices have been received by Borrower, except as set forth in Schedule 5.11.

(c) Without limiting the generality of Section 5.6 above and except as set forth in **Schedule 5.11,** with respect to any Product marketed or sold by Borrower, Borrower has received, and such Product is the subject of, all Required Permits needed in connection with the marketing and sales of such Product as currently being marketed or sold by Borrower, and, except for those reported to Agent in accordance with Section 6.2(f), Borrower has not received any notice from any applicable Governmental Authority, specifically including the FDA, that such Governmental Authority is conducting an investigation or review of any such Required Permit or approval due to material deficiencies or violations of Laws and/or the Required Permits, or that any such Required Permit has been revoked or withdrawn, nor has any such Governmental Authority issued any order or recommendation stating that such marketing or sales of such Product cease or that such Product be withdrawn from the marketplace. As of the Closing Date, no such notices have been received by Borrower and no such orders have been issued by any Governmental Authority, except as set forth in Schedule 5.11.

(d) Without limiting the generality of Section 5.6 above, (i) there have been no adverse clinical test results which have or could reasonably be expected to cause a Material Adverse Change, and (ii) there have been no Product recalls or voluntary Product withdrawals from any market which have or could reasonably be expected to cause a Material Adverse Change.

(e) Except as set forth in Schedule 5.11, Borrower has not experienced any significant failures in its manufacturing of any Product such that the amount of such Product successfully manufactured by Borrower in accordance with all specifications thereof and the required payments related thereto in any month shall decrease in a manner resulting in a Material Adverse Change.

5.12 LecTec Merger Documents. As of the Closing Date, all representations and warranties in the LecTec Merger Agreement and the other LecTec Merger Documents are true, correct and complete in all material respects and all of the closing conditions to the LecTec Merger as set forth in the LecTec Merger Documents have been satisfied.

## 6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees to do all of the following:

6.1 Organization and Existence; Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Borrower shall comply, and have each Subsidiary comply, with all Laws, ordinances and regulations to which it is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Agent for the ratable benefit of the Lenders, in all of the Collateral. Upon written request of Agent, Borrower shall promptly provide copies of any such obtained Governmental Approvals to Agent.

(c) In connection with the manufacture, marketing or sale of each and any Product by Borrower, Borrower shall comply fully and completely in all respects with all Required Permits at all times issued by any Governmental Authority the noncompliance with which could reasonably be expected to have a Material

Adverse Change, specifically including the FDA, with respect to such manufacture, marketing or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to Agent: (i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, income statement and cash flow statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent; (ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion (it being agreed that Lurie Besikof Lapidus & Co, LLP is acceptable to Agent); (iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than thirty (30) days after the last day of Borrower's fiscal year, Borrower's financial projections for current fiscal year as approved by Borrower's Board of Directors; (iv) within five (5) days of delivery, copies of all statements, reports and notices made available to all of Borrower's security holders; (v) so long as Borrower is subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission or a link thereto on Borrower's or another website on the Internet; (vi) a prompt report of any legal actions pending or threatened against Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of One Hundred Thousand Dollars ($100,000) or more or could result in a Material Adverse Change; and (vii) budgets, sales projections, operating plans and other financial information as reviewed and approved by the Borrower's Board of Directors and reasonably requested by Agent.

(b) Within thirty (30) days after the last day of each month, deliver to Agent with the monthly financial statements described above, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall allow, at the sole cost of Borrower, Agent and Lenders to visit and inspect any of its properties, to examine and make abstracts or copies from any of Borrower's Books, to conduct a collateral audit and analysis of its operations and the Collateral to verify the amount and age of the accounts, the identity and credit of the respective account debtors, to review the billing practices of Borrower and to discuss its respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. Notwithstanding the foregoing, such visits, inspections, examinations and audits shall be conducted at Borrower's expense no more often than once every twelve (12) months unless a Default or Event of Default has occurred and is continuing.

(d) Within twenty (20) days of (i) acquiring and/or obtaining any new Material Intellectual Property, or (ii) entering or becoming bound by any additional license or sublicense agreement or other agreement with respect to rights in Material Intellectual Property (other than over-the-counter software that is commercially available to the public), deliver to Agent an updated **Schedule 5.2(d)** reflecting same, and upon any other material change in Borrower's Material Intellectual Property from that listed on **Schedule 5.2(d)**. Borrower shall take such commercially reasonable steps as Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all licenses or agreements to be deemed "Collateral" and for Agent to have a security interest in such license or agreement that might otherwise, in the absence of such waiver or consent, be restricted or prohibited by Law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (y) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Loan Documents.

(e) If, after the Closing Date, Borrower determines to manufacture, sell, clinically develop (i.e. test/use in humans), or market any new Product, Borrower shall give prior written notice to Agent of such determination (which shall include a brief description of such Product, plus a list of all Required Permits relating to such new Product (and a copy of such Required Permits if requested by Agent) and/or Borrower's manufacture, sale,

clinical development or marketing thereof issued or outstanding as of the date of such notice), along with a copy of an updated **Schedule 5.11**; *provided, however,* that if Borrower shall at any time obtain any new or additional Required Permits from the FDA, DEA, or parallel state or local authorities, or foreign counterparts of the FDA, DEA, or parallel state or local authorities, with respect to any Product which has previously been disclosed to Agent, Borrower shall promptly give written notice to Agent of such new or additional Required Permits (along with a copy thereof if requested by Agent).

(f) Borrower shall promptly provide Agent with written notice of (i) any notice from any applicable Governmental Authority, specifically including the FDA, that such Governmental Authority is conducting an investigation or review of any Required Permit needed in connection with the marketing and/or sales of Products or approval due to material deficiencies or violations of Laws and/or such Required Permits, or that any such Required Permit has been revoked or withdrawn, (ii) the issuance by any Governmental Authority of any order or recommendation stating that such marketing or sales of such Product cease or that such Product be withdrawn from the marketplace or (iii) any notice from any applicable Governmental Authority, specifically including the FDA, that such Governmental Authority is conducting an investigation or review of (A) Borrower's manufacturing facilities and processes for such Product which have disclosed any material deficiencies or violations of Laws and/or the Required Permits related to the manufacture of such Product, or (B) any such Required Permit or that any such Required Permit has been revoked or withdrawn, nor has any such Governmental Authority issued any order or recommendation stating that the manufacturing of such Product by Borrower should cease.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Closing Date. Borrower must promptly notify Agent of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars ($100,000).

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof; provided, that, to the extent that Borrower has no knowledge of an immaterial local tax in an amount not to exceed $10,000, Borrower shall not be in violation of this Section 6.4 so long such tax has not resulted in a Lien against the Collateral and Borrower, upon becoming aware of such tax, either promptly (and in any event within 5 days) of becoming aware pays such tax in full or contests such tax in accordance with the provisions for such contest set forth in Section 5.8. Borrower shall pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms. Borrower shall deliver to Agent, on demand, appropriate certificates attesting to any such payments referred to in this Section 6.4.

6.5 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for similarly situated companies in Borrower's industry and location and as Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Agent. All property policies shall have a lender's loss payable endorsement showing Agent as lender loss payee and waive subrogation against Agent, and all liability policies shall show, or have endorsements showing, Agent, as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Agent at least thirty (30) days notice before canceling, amending, or declining to renew its policy. At Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Agent's option, be payable to Agent on behalf of the Lenders on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to $200,000, in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Agent and Lenders have been granted a first priority security interest and Borrower shall execute all instruments and take all further action as Agent reasonably requests to perfect Agent's Lien in such Collateral, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall be paid directly to Agent (or if such proceeds are received by Borrower, Borrower shall hold such proceeds in trust for the benefit of Agent and the Lenders and shall

promptly pay such proceeds to Agent), for the ratable benefit of the Lenders, on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Agent, Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Agent deems prudent.

6.6 Operating Accounts.

(a) Maintain all of its and all of its Subsidiaries' operating and other Deposit Accounts, Securities Accounts, Investment Accounts and Commodity Accounts with Silicon Valley Bank or its affiliates; provided that Borrower shall be permitted to maintain one or more petty cash Deposit Accounts so long as the aggregate amount on deposit in all such Deposit Accounts shall not exceed $50,000.00 in the aggregate at any one time and all such Deposit Accounts are identified to Agent by Borrower as such (the "**Petty Cash Accounts**").

(b) Provide Agent five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution. In addition, for each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Agent's Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without prior written consent of Agent. The provisions of the previous sentence shall not apply to the Petty Cash Accounts or deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Agent by Borrower as such.

6.7 Protection of Intellectual Property Rights. Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intellectual Property. All Material Intellectual Property of Borrower is and shall be fully protected and/or duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. Borrower shall use commercially reasonable efforts not to become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property. Borrower shall at all times (i) use commercially reasonable efforts to conduct its business without infringement of any Intellectual Property rights of others and (ii) not knowingly conduct its business without infringement of any Intellectual Property rights of others. Borrower shall do the following, to the extent it determines, in the exercise of its reasonable business judgment, that it is prudent to do so: (a) protect, defend and maintain the validity and enforceability of its Material Intellectual Property; (b) promptly advise Agent in writing of material infringements of its Intellectual Property; and (c) not allow any Material Intellectual Property to be abandoned, forfeited or dedicated to the public without Agent's prior written consent. If Borrower (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then Borrower shall concurrently provide written notice thereof to Agent and shall execute such intellectual property security agreements and other documents and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such property. If Borrower registers any copyrights or mask works in the United States Copyright Office, Borrower shall on or prior to the last day of each fiscal quarter of Borrower,: (x) provide Agent a written summary of such copyrights or mask works together with a copy of each application it has filed with the United States Copyright Office (excluding Exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. Borrower shall promptly, or in the case of copyrights and mask works, on or prior to the last day of each fiscal quarter of Borrower, provide to Agent copies of all applications that it files for patents or for the registration of trademarks, servicemarks, copyrights or mask works, together with evidence of the recording of

the intellectual property security agreement necessary for Agent, for the ratable benefit of the Lenders, to perfect and maintain a first priority perfected security interest in such property.

6.8 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Agent, without expense to Agent, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Agent may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Agent of any litigation or governmental proceedings pending or threatened (in writing) against Borrower which (i) would involve more than $100,000 or (ii) would reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Agent of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Creation/Acquisition of Subsidiaries. In the event Borrower or any Subsidiary creates or, to the extent permitted hereunder, acquires any Subsidiary, Borrower and such Subsidiary shall promptly (and in any event within 5 Business Days of such creation or acquisition) notify Agent of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Agent to cause each such domestic Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on **Exhibit A** hereto); and Borrower shall grant and pledge to Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each Subsidiary (the foregoing collectively, the "**Joinder Requirements**"); provided, that Borrower shall not be permitted to make any Investment in such Subsidiary until such time as Borrower has satisfied the Joinder Requirements.

6.11 Minimum Net Invoiced Revenues. As of any Testing Date:

(a) Borrower shall not permit its consolidated Net Invoiced Revenue for the Six Month Testing Period to be less than (i) at any Testing Date through and including the Testing Date ending February 1, 2013, the minimum amounts set forth on the Schedule 1 attached to that certain Side Letter Agreement, dated as of the Closing Date, among Borrower, Agent and Silicon Valley Bank, as Lender, opposite such Testing Date set forth on such Schedule 1 and (ii) for any Testing Date thereafter (i.e. after February 1, 2013), fifty percent (50%) of the consolidated Net Invoiced Revenue for the Corresponding Six Month Testing Period ended as of such Corresponding Testing Date as set forth in Borrower's annual operating plan for the calendar year ended which includes the month-end for such Six Month Testing Period, which plan has been approved by AxoGen Inc.'s Board of Directors and has been prepared in good faith and based on reasonable and appropriate measurement criteria; and

(b) In addition to clause (a), beginning with the March 1, 2013 Testing Date and thereafter, Borrower shall not permit its consolidated Net Invoiced Revenue for the Corresponding Twelve Month Testing Period ended for any Corresponding Testing Date to be less than the amount of Borrower's consolidated Net Invoiced Revenue for the Corresponding Twelve Month Testing Period ended for the immediately preceding Corresponding Testing Date.

Notwithstanding the foregoing, if Borrower fails to satisfy the covenants set forth in clauses (a) and/or (b) above, for any Testing Date, Borrower shall not be in violation of such covenant if, as of such Testing Date and at all times thereafter until Borrower is back in compliance with this covenant, Borrower shall have cash and Cash Equivalents on hand in a Collateral Account located at Silicon Valley Bank or one of its affiliates and subject to a Control Agreement of not less than eighty percent (80%) of the then outstanding principal balance of the Term Loan.

6.12 Further Assurances.

(a) Promptly execute any further instruments and take further action as Agent reasonably requests to perfect or continue Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Agent, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material effect on any of the Governmental Approvals material to Borrower's business or otherwise on the operations of Borrower and its Subsidiaries, taken as a whole; provided, however, that proprietary know how relating to the manufacture and testing processes may be redacted so long as Agent and Lenders are given and shall have the right to access such redacted information either at the Borrowers' offices or, if acceptable to Borrower in its sole discretion, through a secure on-line location or transmission.

6.13 Post-Closing Obligations. Borrowers shall complete each of the post closing obligations and/or deliver to Agent each of the documents, instruments, agreements and information listed on **Schedule 6.13** attached hereto, on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent and Lenders.

## 7. NEGATIVE COVENANTS

Borrower shall not do any of the following without the prior written consent of Agent and Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, grant a security in or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the Ordinary Course of Business; (b) of worn-out or obsolete Equipment; (c) in connection with Permitted Liens; (d) non-exclusive licenses for the use of Intellectual Property of Borrower or its Subsidiaries in the ordinary course of business; (e) the granting of rights to distribute Products in jurisdictions other than the United States so long as such distribution rights do not involve the Transfer of any Intellectual Property or Intellectual Property rights; or (f) Transfers among Borrowers and/or Subsidiaries who have joined this Agreement in accordance with Section 6.10. Without limiting the foregoing, Borrower agrees that it shall not grant a security interest or otherwise encumber any of its Intellectual Property without Agent's and Required Lenders' prior written consent. Notwithstanding the foregoing, nothing in this Agreement shall restrict the Borrower from abandoning or terminating the Non-Material Intellectual Property as designated on **Schedule 5.2(e)** on the Closing Date (which, for the avoidance of doubt, means no rights with respect to such Non-Material Intellectual Property shall pass to any other Person in connection with such abandonment or termination other than, in the case of the termination of a license agreement, any rights that revert back to the licensor upon such termination).

7.2 Changes in Business, Management, Ownership or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) (i) (A) have a change in the Chief Executive Officer or the position held on the Closing Date by John P. Engels that does not result in a qualified replacement or (B) the failure to fill a vacancy with respect to the Chief Executive Officer or the position held on the Closing Date by John P. Engels with a suitable qualified replacement within ninety (90) days following such vacancy, or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to such transaction own more than forty percent (40%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering or to venture capital investors so long as Borrower identifies to Agent the venture capital investors prior to the closing of the transaction); or (d) add any new offices or business locations, including warehouses without obtaining an Access Agreement with respect to such location (unless such new offices or business locations contain less than Fifty Thousand Dollars ($50,000) in Borrower's assets or property and so long as such new offices or business locations do not contain any Borrower's Books); (e) change its jurisdiction of organization; (f) change its organizational structure or type; (g) change its legal name; or (h) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person; *provided, however*, that a Subsidiary of Borrower may merge or consolidate into another Subsidiary that is a Loan Party or into Borrower or AxoGen Corp may merge or consolidated into AxoGen Inc, so long as (a) Borrower has provided Agent with prior written notice of such transaction, (b) in the case of a merger or consolidation of a Subsidiary of Borrower, Borrower shall be the surviving legal entity, (c) in the case of a merger or consolidation of AxoGen Corp into AxoGen Inc, AxoGen Inc shall be the surviving legal entity (d) Borrower's tangible net worth is not thereby reduced, and (e) as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. (a) Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens and non-exclusive licenses or distribution rights permitted under Section 7.1, (b) permit any Collateral not to be subject to the first priority security interest granted herein, or (c) enter into any agreement, document, instrument or other arrangement (except with or in favor of Agent) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or (d) encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account, except pursuant to the terms of Section 6.6(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in common stock) or make any distribution or payment on or redeem, retire or purchase any capital stock (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar plans), or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the Ordinary Course of Business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 [Reserved].

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of the Term Loan for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other Law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

7.11 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and its principals, which information includes the name and address of Borrower and its principals and such other information that will allow Agent to identify

such party in accordance with Anti-Terrorism Laws. Borrower will not, nor will Borrower permit any Subsidiary or Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower shall immediately notify Agent if Borrower has knowledge that Borrower or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not, nor will Borrower permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

## 8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on the Term Loan on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default;

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.1(c), 6.2, 6.4, 6.5, 6.6, 6.7, 6.10, 6.11, 6.12 or 6.13 or violates any covenant in Section 7; or

(b) Borrower or any of its Subsidiaries fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within fifteen (15) days after the occurrence thereof; *provided, however*, that if the default cannot by its nature be cured within the fifteen (15) day period or cannot after diligent attempts by Borrower be cured within such fifteen (15) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default. Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a)(i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under control of Borrower (including a Subsidiary) on deposit with the Lenders or any Lender Affiliate, or (ii) a notice of lien, levy, or assessment is filed against any of Borrower's assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b)(i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any part of its business;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within sixty (60) days;

8.6 Other Agreements. There is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Fifty Thousand Dollars ($50,000) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Fifty Thousand Dollars ($50,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof;

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Agent and/or the Lenders or to induce Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 [Reserved].

8.10 Governmental Approvals. (a) Any Governmental Approval relating to the manufacture, marketing or sale of Product shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the Ordinary Course of Business, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or non-renewal pursuant to Section 8.10 (a)(i) or 8.10 (a)(ii) has, or could reasonably be expected to have, a Material Adverse Change, or (b) any Governmental Approval (other than Governmental Approvals relating to Products) shall have been revoked, rescinded, suspended, modified in an adverse manner or not renewed in the Ordinary Course of Business where such revocation, rescission, suspension, modification or non-renewal either (i) adversely affects the Borrower's status or legal qualification to do business in its jurisdiction of incorporation or formation or any other jurisdiction material to its business or (ii) has, or could reasonably be expected to have, a Material Adverse Change;

8.11 Criminal Proceeding. The institution by any Governmental Authority of criminal proceedings against Borrower;

8.12 Lien Priority. Except as permitted by Agent, any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be secured thereby, subject to no prior or equal Lien other than Permitted Liens solely to the extent that such Permitted Lien is prior to Agent's and Lenders' Lien as a matter of statutory law;

8.13 Change in Control. A Change in Control shall have occurred; or

8.14 Withdrawals, Recalls, Adverse Test Results and Other Matters. (a) The institution of any proceeding by FDA or similar Governmental Authority to order the withdrawal of any Product from the market or to enjoin Borrower or any representative of Borrower from manufacturing, marketing, selling or distributing any Product where such event could reasonably be expected to have a Material Adverse Change, (b) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject or withdraw any Required Permit held by Borrower or any representative of Borrower, which, in each case, could reasonably be expected to cause a Material Adverse Change, (c) the commencement of any enforcement action against Borrower by DEA, FDA, or any other Governmental Authority, (d) the recall of any Products from the market, the voluntary withdrawal of any Products from the market, or actions to discontinue the sale of any Products, which, in each case, could reasonably be expected to have a Material Adverse Change or (e) the

occurrence of adverse test results in connection with a Product which could reasonably be expected to cause a Material Adverse Change.

## 9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Agent may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Agent or the Lenders), or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Agent and/or the Lenders shall be immediately terminated without any action by Agent or the Lenders).

(b) Without limiting the rights of Agent and Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default Agent shall have the right, at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Agent or any Lender holds or controls, or (b) any amount held or controlled by Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Agent and Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Agent considers advisable, notify any Person owing Borrower money of Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Agent requests and make it available as Agent designates. Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Agent a license to enter and occupy any of its premises, without charge, to exercise any of Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Agent for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books; and

(vi) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Agent under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Agent, imminently threatens the ability of Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Agent, could result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Agent or a third party as the Code permits. Borrower hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Agent may obtain such insurance or make such payment, and all amounts so paid by Agent are Lenders' Expenses and immediately due and payable, bearing interest at the then highest applicable rate, and secured by the Collateral. Agent will make reasonable efforts to provide Borrower with prompt notice of Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No such payments by Agent are deemed an agreement to make similar payments in the future or Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled

to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of the Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; *provided, however*, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to the Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lender's claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the Agent and other Lenders for purposes of perfecting Agent's security interest therein. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders by Borrower, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

9.5 Liability for Collateral. So long as Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Agent and the Lenders, Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Agent's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Agent thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Agent and then is only effective for the specific instance and purpose for which it is given. Agent's rights and remedies under this Agreement and the other Loan Documents are cumulative. Agent has all rights and remedies provided under the Code, by Law, or in equity. Agent's exercise of one right or remedy is not an election, and Agent's waiver of any Event of Default is not a continuing waiver. Agent's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Agent on which Borrower is liable.

9.8 Borrower Liability. Either Borrower may, acting singly, request the Term Loan hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting the Term Loan hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay the Term Loan made hereunder and all other Obligations, regardless of which Borrower actually receives the proceeds of the Term Loan, as if each Borrower hereunder shall have directly received all proceeds of the Term Loan. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require the Lenders or Agent to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. The Lenders or Agent may exercise or not exercise any right or remedy they have against any Borrower or any security (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of the Lenders and Agent under this Agreement) to

seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for the Lenders and Agent and such payment shall be promptly delivered to Agent for application to the Obligations, whether matured or unmatured.

**10. NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail (if an email address is specified herein) or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Agent, Lender or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:

AxoGen, Inc.
AxoGen Corporation
13859 Progress Blvd.
Alachua, FL 32615
Attention: Karen Zaderej
Fax: (386) 462-6803
E-Mail: kzaderej@axogeninc.com

with a copy to:

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
Attention: Fahd M.T. Riaz, Esq.
Fax: (215) 963-5001
E-Mail: friaz@morganlewis.com

If to Agent:

MidCap Financial SBIC, LP
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attention: Portfolio Management- Life Sciences
Fax: (301) 941-1450
E-Mail: lviera@midcapfinancial.com

with a copy to:

Midcap Financial, LLC
7255 Woodmont Avenue, Suite 200

Bethesda, Maryland 20814
Attention: General Counsel
Fax: (301) 941-1450
E-Mail: rgoodridge@midcapfinancial.com

If to Lenders: To the address specified on the signature page of such Lender attached hereto.

**11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

THIS AGREEMENT, EACH SECURED PROMISSORY NOTE AND EACH OTHER LOAN DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. IF ANY ACTION ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IS COMMENCED BY AGENT OR LENDERS IN THE STATE COURTS OR IN THE U.S. DISTRICT COURTS OF THE STATE OF MARYLAND, BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. NOTWITHSTANDING THE FOREGOING, AGENT AND LENDERS RESERVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 9.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN ANY ACTION OR SUIT BROUGHT BY AGENT OR LENDERS AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN SECTION 10 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILS, PROPER POSTAGE PREPAID.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENT AND LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

Borrower, Agent and each Lender agree that the Term Loan shall be deemed to be made in, and the transactions contemplated hereunder and in any other Loan Document shall be deemed to have been performed in, the State of Maryland.

**12. GENERAL PROVISIONS**

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Agent's prior written consent (which may be granted or withheld in Agent's discretion). Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan, together with all related obligations of such Lender hereunder. Borrower and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Agent shall have received and accepted

an effective assignment agreement in form and substance acceptable to Agent, executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Agent reasonably shall require. Notwithstanding anything set forth in this Agreement to the contrary, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however,* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

12.2 Indemnification.

(a) Borrower agrees to indemnify, defend and hold Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or Lenders' Expenses incurred, or paid by Indemnified Person from, following, or arising from transactions between Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except , with respect to (i) and (ii), for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction (collectively, the "**Indemnified Liabilities**").

(b) Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds, except to the extent that such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements are directly caused by the gross negligence or willful misconduct of any Indemnified Person as finally determined by a court of competent jurisdiction.

(c) To the extent that the undertaking set forth in this Section 12.2 may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

12.6 Integration. This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Agent shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Agent shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to the Lenders' and Agent's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Term Loan (*provided, however*, the Lenders and Agent shall use commercially reasonable efforts to obtain such prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by Law, regulation, subpoena, or other order; (d) to regulators or as otherwise required in connection with an examination or audit; (e) as Agent considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Agent's possession when disclosed to the Lenders and/or Agent, or becomes part of the public domain after disclosure to the Lenders and/or Agent; or (ii) is disclosed to the Lenders and/or Agent by a third party, if the Lenders and/or Agent does not know that the third party is prohibited from disclosing the information. Agent and/or Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis, so long as Agent and/or Lenders, as applicable, do not disclose Borrower's identity or the identity of any Person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Agent or the Lenders or any entity under the control of Agent or the Lenders (including a Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 [Reserved.]

12.12 Amendments.

(a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Agent and the Required Lenders, *provided, however*, that

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Agent shall be effective without Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all or any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.12 or the definitions of the terms used in this Section 12.12 insofar as the definitions affect the substance of this Section 12.12; (F) consent to the assignment, delegation or other transfer by any Borrower or any Guarantor of any of its rights and obligations under any Loan Document or release Borrower or any Guarantor of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Agent and Lenders pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.12(a)(i) through (iii) above, Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of the Borrower.

12.13 Publicity. Borrower will not directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable Law (including required filings with the Securities and Exchange Commission), subpoena or judicial or similar order, in which case Borrower shall endeavor to give Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorizes each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agrees that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, such authorization shall be subject to such Lender providing Borrower and the other Lenders with an opportunity to review and confer with such Lender regarding, and approve, the contents of any such tombstone, advertisement or information, as applicable, prior to its initial submission for publication, but subsequent publications of the same tombstone, advertisement or information shall not require Borrower's approval.

12.14 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

## 13. AGENT

13.1 Appointment and Authorization of Agent. Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

13.2 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

13.3 Liability of Agent. Except as otherwise provided herein, no Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by Borrower or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower or any Affiliate thereof.

13.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of all Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

13.5 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Agent will notify the Lenders of its receipt of any such notice. Agent shall take such action with respect to an Event of Default as may be directed in writing by the Required Lenders in accordance with Section 9(a); *provided, however*, that while an Event of Default has occurred and is continuing, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such

Event of Default as Agent shall deem advisable or in the best interest of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Loan Documents, payment of taxes on behalf of Borrower, payments to landlords, warehouseman, bailees and other Persons in possession of the Collateral and other actions to protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting Borrower and/or the Collateral.

13.6 Credit Decision; Disclosure of Information by Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and its respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Agent herein, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of any Agent-Related Person.

13.7 Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities (which shall not include legal expenses of Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; *provided, however*, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; *provided, however*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 13.7. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Lenders' Expenses incurred after the closing of the transactions contemplated by this Agreement) incurred by Agent (in its capacity as Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 13.7 shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Agent.

13.8 Agent in its Individual Capacity. With respect to its Pro Rata Share of the Term Loan, MidCap shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Agent, and the terms "Lender" and "Lenders" include MidCap in its individual capacity.

13.9 Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in

conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall give notice to the Lenders and Borrowers. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this subsection (b).

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if not already discharged therefrom as provided above in this subsection (c)). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Section 13 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

13.10 Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, Agent (irrespective of whether the principal of any Loan, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Agent and their respective agents and counsel and all other amounts due the Lenders and Agent allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent under Section 2.4(d). To the extent that Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

13.11 Collateral and Guaranty Matters. The Lenders irrevocably authorize Agent, at its option and in its discretion, to release any Guarantor and any Lien on any Collateral granted to or held by Agent under any Loan

Document (a) upon the date that all Obligations due hereunder have been fully and indefeasibly paid in full and no Term Loan Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, (b) that is transferred or to be transferred as part of or in connection with any Transfer permitted hereunder or under any other Loan Document, or (c) as approved in accordance with Section 12.12. Upon request by Agent at any time, all Lenders will confirm in writing Agent's authority to release its interest in particular types or items of Property, pursuant to this Section 13.11.

13.12 Cooperation of Borrower. If necessary, Borrower agrees to (a) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of any portion (in whole or in part) of the Term Loan to an assignee in accordance with Section 12.1, (b) make Borrower's management available to meet with Agent and prospective participants and assignees of the Term Loan and (c) assist Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of any portion (in whole or in part) of the Term Loan reasonably may request. Subject to the provisions of Section 12.9 Borrower authorizes each Lender to disclose to any prospective participant or assignee of any portion (in whole or in part) of the Term Loan, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

## 14. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

**"Access Agreement"** means a landlord consent, bailee letter or warehouseman's letter, in form and substance reasonably satisfaction to Agent, in favor of Agent executed by such landlord, bailee or warehouseman, as applicable, for any third party location.

**"Account"** means any "account", as defined in the Code, with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

**"Account Debtor**" means any "account debtor", as defined in the Code, with such additions to such term as may hereafter be made.

**"Additional Equity Transaction"** means the sale by AxoGen Inc of One Million Dollars ($1,000,000) worth of its common stock to certain Purchasers pursuant to, under and as defined in that certain Stock Purchase Agreement, dated as of May 31, 2011, by and among LecTec Corporation (now known as AxoGen Inc) and such Purchasers, as amended.

**"Affiliate"** means, with respect to any Person, a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

**"Agent"** means, MidCap, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

**"Agent-Related Person"** means the Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; *provided, however*, that no Agent-Related Person shall be an Affiliate of Borrower.

**"Agreement"** has the meaning given it in the preamble of this Agreement.

**"Amortization Date"** means October 1, 2012.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Approved Goods and Services**" means goods sold and/or services rendered by Borrower in the Ordinary Course of Business, in material compliance with all Laws, and consistent with the type of goods sold and/or services rendered by Borrower throughout all or substantially all of its business operations as of the Closing Date.

"**Blocked Person"** means: (a) any Person listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Borrower**" has the meaning given it in the preamble of this Agreement.

"**Borrower's Books**" means all of Borrower's books and records, including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**"Borrowing Resolutions**" means, with respect to any Person, those resolutions adopted by such Person's Board of Directors and delivered by such Person to Agent approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Agent and the Lenders may conclusively rely on such certificate unless and until such Person shall have delivered to Agent a further certificate canceling or amending such prior certificate.

"**Business Day**" means any day that is not a Saturday, Sunday or a day on which Agent is closed.

"**Cash Equivalents**" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition, (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., (c) certificates of deposit issued maturing no more than one (1) year after issue, and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (b) of this definition. For the avoidance of doubt, the direct purchase by Borrower, co-borrower, or any subsidiary of Borrower of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower, co-borrower, or any subsidiary of Borrower shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include, and each Borrower and

Subsidiary is prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security.

"**Change in Control**" means any event, transaction, or occurrence as a result of which (a) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing forty percent (40%) or more of the combined voting power of Borrower's then outstanding securities; (b) prior to the earliest to occur of (i) October 15, 2012 and (ii) the Board of Directors of AxoGen Inc consisting of at least eight directors, during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by the Board of Directors of Borrower was approved by a vote of not less than two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a one-third of the Directors then in office; or (c) after the earliest to occur of (i) October 15, 2012 and (ii) the Board of Directors of AxoGen Inc consisting of at least eight directors, during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by the Board of Directors of Borrower were approved by a vote of not less than two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

"**Claims**" has the meaning given it in Section 12.2.

"**Closing Date**" has the meaning given it in the preamble of this Agreement.

"**Code**" means the Uniform Commercial Code in effect on the date hereof, as the same may, from time to time, be enacted and in effect in the State of Maryland; *provided, however*, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; and *provided, further*, that in the event that, by reason of mandatory provisions of Law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of Maryland, the term "**Code**" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the other Loan Documents, including, without limitation, all of the property described in **Exhibit A** hereto.

"**Collateral Account**" means any Deposit Account, Securities Account or Commodity Account.

"**Commitment Percentage**" means, as to any Lender, the percentage set forth opposite such Lender's name on **Schedule 1**, as amended from time to time.

"**Commodity Account**" means any "commodity account", as defined in the Code, with such additions to such term as may hereafter be made.

"**Communication**" has the meaning given it in Section 10.

"**Compliance Certificate**" means a certificate, duly executed by an authorized officer of Borrower, appropriately completed and substantially in the form of **Exhibit C**.

"**Contingent Obligation**" means, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the Ordinary Course of Business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" means any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Agent pursuant to which Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account or Commodity Account.

"**Corresponding Testing Date**", "**Corresponding Six Month Testing Period**" and "**Corresponding Twelve Month Testing Period**" mean the corresponding Testing Dates and Testing Periods (whether a Six Month Testing Period or a Twelve Month Testing Period) opposite each other in the table below:

| Testing Date | Testing Period ended |
|---|---|
| January 1 of any year | November 30 of the prior year |
| February 1 of any year | December 31 of the prior year |
| March 1 of any year | January 31 of that year |
| April 1 of any year | February 28 (or 29 in any leap year) of that year |
| May 1 of any year | March 31 of that year |
| June 1 of any year | April 30 of that year |
| July 1 of any year | May 31 of that year |
| August 1 of any year | June 30 of that year |
| September 1 of any year | July 31 of that year |
| October 1 of any year | August 31 of that year |
| November 1 of any year | September 30 of that year |
| December 1 of any year | October 31 of that year |

"**Credit Extension**" means the Term Loan or any other extension of credit by Agent or the Lenders for Borrower's benefit

"**DEA**" means the Drug Enforcement Administration of the United States of America, and any successor agency thereof.

**"Default**" means any event which with notice or passage of time or both, would constitute an Event of Default.

**"Default Rate**" has the meaning given it in Section 2.3(c).

"**Deposit Account**" means any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" means Borrower's deposit account, account number **3300805639**, maintained with Silicon Valley Bank and over which Agent has been granted control for the ratable benefit of all Lenders.

**"Dollars**," "**dollars**" and **"$**" each means lawful money of the United States.

**"Drug Application**" means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

**"Eligible Assignee"** means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, "Eligible Assignee" shall not include Borrower, any Guarantor or any of Borrower's or any Guarantor's Affiliates or Subsidiaries. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party becoming an assignee incident to such forced divestiture.

"**Equipment**" means all "equipment", as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, and all regulations promulgated thereunder.

"**Event of Default**" has the meaning given it in Section 8.

"**Existing Senior Indebtedness**" means the Indebtedness in the original principal amount of $7,500,000.00 owed by Borrower to Oxford and Atel pursuant to the Loan and Security Agreement, dated April 21, 2008, by and among Borrower, Oxford and Atel, as amended.

"**Existing Subordinated Indebtedness**" means the Indebtedness incurred pursuant to (i) that certain Convertible Promissory Note and Warrant Purchase Agreement dated as of June 11, 2010 by and among AxoGen Corp and the Purchasers party thereto from time to time in the original principal amount of Three Million Six Hundred Ninety Seven Thousand Five Hundred Forty Five Dollars ($3,697,545), together with each of the Convertible Promissory Notes made and executed in connection therewith, (ii) that certain Subordinated Secured Convertible Promissory Note, dated as of May 3, 2011 in the original principal amount of Five Hundred Thousand Dollars ($500,000) made by AxoGen Corp to LecTec Corporation and (iii) that certain Convertible Promissory Note Purchase Agreement, dated as of May 31, 2011, by and among AxoGen Corp, LecTec Corporation, as a Purchaser and each of the other Purchasers party thereto from time to time in the original principal amount of Five Million Dollars ($5,000,000)**,** together with each of the Subordinated Secured Convertible Promissory Notes made and executed in connection therewith, in each case as amended.

"**FDA**" means the Food and Drug Administration of the United States of America, or any successor entity thereto.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Final Payment**" means a payment (in addition to and not a substitution for the regular monthly payments of accrued interest plus, if applicable, principal) due on the earlier to occur of (a) the Maturity Date, (b) the acceleration of the Term Loan, and (c) the prepayment of the entire Term Loan pursuant to Section 2.2(c) or 2.2(d), equal to the Term Loan Commitments less the aggregate amount of partial prepayments of the Term Loan made pursuant to Section 2.2(d) *multiplied by* the Final Payment Percentage.

"**Final Payment Percentage**" means two percent (2.00%).

"**Foreign Subsidiary**" has the meaning given it in Exhibit A.

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" means all "general intangibles", as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable Law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantor**" means any present or future guarantor of the Obligations.

"**Indebtedness**" means (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Liabilities**" has the meaning given it in Section 12.2.

"**Indemnified Person**" has the meaning given it in Section 12.2.

"**Indemnified Taxes**" has the meaning given to it in Section 2.6.

"**Insolvency Proceeding**" means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency Law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Intellectual Property**" includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished,

any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Inventory**" means all "inventory", as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" means any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"**IP Agreement**" means that certain Intellectual Property Security Agreement executed and delivered by Borrower to Agent dated of even date herewith.

"**Joinder Requirements**" has the meaning given to it in Section 6.10.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Borrower in any particular circumstance.

"**LecTec**" means LecTec Corporation, a Minnesota corporation.

"**LecTec Merger**" means collectively the merger of AxoGen Corp and Merger Corp, with AxoGen Corp as the surviving entity and the name change of LecTec from "LecTec Corporation" to "AxoGen, Inc.".

"**LecTec Merger Agreement**" means that certain Agreement and Plan of Merger dated as of May 31, 2011, by and among AxoGen Corp, LecTec and Merger Corp, as amended by that certain Amendment No. 1 to Agreement and Plan of Merger dated as of June 30, 2011 by and among AxoGen Corp, LecTec and Merger Corp. and that certain Amendment No.2 to Agreement and Plan of Merger dated as of August 9, 2011 by and among AxoGen Corp, LecTec and Merger Corp.

"**LecTec Merger Documents**" means the LecTec Merger Agreement and all other documents executed in connection with the LecTec Merger.

"**Lender**" means any one of the Lenders.

"**Lenders**" means the Persons identified on **Schedule 1** hereto, and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Lenders' Expenses**" means all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) of Agent and Lenders for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Agent or the Lenders in connection with the Loan Documents.

"**Lien**" means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of Law or otherwise against any property.

"**Loan Documents**" means, collectively, this Agreement, the Warrant, the Perfection Certificate, the IP Agreement, the Control Agreements, the Pledge Agreement, the SBIC Letter Agreement, any landlord consents/waivers, any note, or notes (including each Lender's Secured Promissory Note) or guaranties executed by

Borrower or any Guarantor in connection with the indebtedness governed by this Agreement, and any other present or future agreement between Borrower and/or for the benefit of the Lenders and Agent in connection with this Agreement, all as amended, restated, or otherwise modified.

"**Loan Party**" means Borrower and each Guarantor.

**"Material Adverse Change"** means (a) a material impairment in the perfection or priority of the Agent's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) or prospects of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Material Intellectual Property**" means all of Borrower's Intellectual Property and license or sublicense agreements or other agreements with respect to rights in Intellectual Property that are material to the condition (financial or other), business or operations of Borrower, as determined by Agent in its reasonable credit judgment; provided, that, the parties agree that "Material Intellectual Property" shall not include the Intellectual Property designated as "Non-Material Intellectual Property" on **Schedule 5.2(d)** as of the Closing Date and shall include all other Intellectual Property of the Borrower listed on **Schedule 5.2(d)** as of the Closing Date.

"**Maturity Date**" means April 1, 2015.

"**Maximum Lawful Rate**" has the meaning given to it in Section 2.3(f).

"**Merger Corp**" means Nerve Merger Sub Corp., a Delaware corporation.

"**Net Invoiced Revenues**" means revenues of Borrower generated and invoiced in the Ordinary Course of Business and in accordance with GAAP from the sale or provision of Approved Goods and Services and which are fully and unconditionally earned under the terms of such sale or provision *net of* wholesaler chargebacks, allowances for product returns, cash discounts, administrative fees and other rebates.

"**Obligations**" means all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, under this Agreement or the other Loan Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Agent, and the performance of Borrower's duties under the Loan Documents.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" means, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than 30 days prior to the Closing Date, and (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Loan Party, the ordinary course of business of such Loan Party, as conducted by such Loan Party in accordance with past practices.

"**Other Permitted Locations**" means, so long as (i) such locations contain less than Fifty Thousand Dollars ($50,000) worth of Collateral and (ii) Borrower's Books that are comprised solely of the historical

Borrower's Books of Borrower that are not used in respect of current Borrower business, the locations numbered 7, 9, 10, 11 and 12 on **Schedule 5.2(e)** as of the Closing Date.

"**Partial Final Payment**" means a payment (in addition to and not a substitution for the regular monthly payments of accrued interest plus, if applicable, principal) due on the prepayment of a portion of the Term Loan pursuant to 2.2(d), equal to the amount of the Term Loan so prepaid *multiplied by* the Final Payment Percentage.

"**Payment/Advance Form**" means that certain form attached hereto as **Exhibit B**.

"**Payment Date**" means the first calendar day of each calendar month.

"**Perfection Certificate**" has the meaning given it in Section 5.1.

"**Permits**" means licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, marketing authorizations, other authorizations, registrations, permits, consents and approvals required in connection with the conduct of Borrower's or any Subsidiary's business or to comply with any applicable Laws, including, without limitation, drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State governments for the conduct of Borrower's or any Subsidiary's business.

"**Permitted Indebtedness**" means:

(a) Borrower's Indebtedness to the Lenders and Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Closing Date and described on **Schedule 7.4**;

(c) [Reserved];

(d) unsecured Indebtedness to trade creditors incurred in the Ordinary Course of Business;

(e) Indebtedness secured by Permitted Liens; and

(f) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, *provided, however*, that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"**Permitted Investments**" means:

(a) Investments existing on the Closing Date and described on **Schedule 7.7**;

(b) Investments consisting of Cash Equivalents; and

(c) Investments in Subsidiaries permitted pursuant to Section 6.10 of this Agreement.

"**Permitted Liens**" means:

(a) Liens existing or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on its Books, *provided, however*, that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended , and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) statutory Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons imposed without action of such parties, *provided, however*, that they have no priority over any of Agent's Lien and the aggregate amount of such Liens does not any time exceed Fifty Five Thousand Dollars ($50,000);

(e) leases or subleases of real property granted in the Ordinary Course of Business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the Ordinary Course of Business, if the leases, subleases, licenses and sublicenses do not prohibit granting Agent a security interest;

(f) banker's liens, rights of setoff and Liens in favor of financial institutions incurred made in the Ordinary Course of Business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions to secure payment of fees and similar costs and expenses subject to Borrower's compliance with Section 6.6(b) hereof;

(g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the Ordinary Course of Business (other than Liens imposed by ERISA);

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.5 or 8.7;

(i) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a Material Adverse Change;

(j) non-exclusive licenses of Intellectual Property granted to third parties in the Ordinary Course of Business; and

(k) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) and (c) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Pledge Agreement**" has the meaning given it in Section 3.1(c).

"**Prepayment Fee**" means with respect to the Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in an amount equal to:

(a) for a prepayment made on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, four percent (4.0%) *multiplied by*, in the case of a prepayment of the entire Term Loan, the outstanding principal amount of the Term Loan and, in the case of a prepayment of a portion of the Term Loan, the amount of the outstanding principal of the Term Loan prepaid;

(b) for a prepayment made after the date which is twelve (12) months after the Closing Date through and including the date which is twenty-four (24) months after the Closing Date, three percent (3.0%) *multiplied by*, in the case of a prepayment of the entire Term Loan, the outstanding principal amount of the Term Loan and, in the

case of a prepayment of a portion of the Term Loan, the amount of the outstanding principal of the Term Loan prepaid; and

(c) for a prepayment made after the date which is twenty-four (24) months after the Closing Date and prior to the Maturity Date, one percent (1.0%) *multiplied by*, in the case of a prepayment of the entire Term Loan, the outstanding principal amount of the Term Loan and, in the case of a prepayment of a portion of the Term Loan, the amount of the outstanding principal of the Term Loan prepaid.

"**Pro Rata Share**" means, as determined by Agent, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by *dividing* the amount of the Term Loan held by such Lender *by* the outstanding aggregate amount of the Term Loan.

"**Products**" means any products manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, including without limitation, those products set forth on **Schedule 5.11** (as updated from time to time in accordance with Section 6.2(d) above); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.2(d) to give notice to Agent and update **Schedule 5.11** prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that (i) products manufactured by Borrower for unaffiliated third parties and (ii) products previously manufactured, sold, developed, tested or marketed by LecTec Corporation more than five (5) years prior to the Closing Date which are no longer manufactured, sold, developed, tested or marketed by Borrower or its predecessors, and have not been for the last five (5) years, shall not be deemed "Products" hereunder.

"**Registered Organization**" means any "registered organization" as defined in the Code, with such additions to such term as may hereafter be made.

"**Required Lenders**" means Lenders having (a) more than 60% of the Term Loan Commitments of all Lenders, or (b) if such Term Loan Commitments have expired or been terminated, more than 60% of the aggregate outstanding principal amount of the Term Loan; *provided, however*, that so long as a party that is a Lender hereunder on the Closing Date does not assign any portion of its Term Loan Commitment or Term Loan, the term "**Required Lenders**" shall include such Lender. For purposes of this definition only, a Lender shall be deemed to include itself, and any Lender that is an Affiliate or Approved Fund of such Lender.

"**Required Permit**" means a Permit (a) issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries or any Drug Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA or any other applicable Governmental Authority necessary for the manufacture, marketing or sale of any Product by any applicable Borrower(s) as such activities are being conducted by such Borrower with respect to such Product at such time), and (b) issued by any Person from which Borrower or any of their Subsidiaries have received an accreditation.

"**Requirement of Law**" means as to any Person, the organizational or governing documents of such Person, and any Law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" means any of the President and Chief Executive Officer or Chief Financial Officer of Borrower.

"**SBIC Letter Agreement**" means that certain letter agreement dated as of the date hereof executed by Borrower in favor of Agent.

"**Secured Promissory Note**" has the meaning given it in Section 2.7.

"**Secured Promissory Note Record**" means a record maintained by each Lender with respect to the outstanding Obligations and credits made thereto.

"**Securities Account**" means any "securities account", as defined in the Code, with such additions to such term as may hereafter be made.

"**Six Month Testing Period**" means the immediately preceding six (6) calendar months ended as of the end of any calendar month.

"**Stated Rate**" has the meaning given to it in Section 2.3(f).

"**Subsidiary**" means, with respect to any Person, any Person of which more than 50.0% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or one or more of Affiliates of such Person.

"**Term Loan**" has the meaning given it in Section 2.2(a).

"**Term Loan Commitment**" means, for any Lender, the obligation of such Lender to make its Pro Rata Share of the Term Loan, up to the principal amount shown on **Schedule 1.** "**Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders.

"**Testing Date**" means the first (1st) day of each calendar month.

"**Testing Period**" means either a Six Month Testing Period or a Twelve Month Testing Period, as the context requires.

"**Transfer**" has the meaning given it in Section 7.1.

"**Twelve Month Testing Period**" means the immediately preceding twelve (12) calendar months ended as of the end of any calendar month.

"**Warrants**" means those certain Warrants to Purchase Stock dated as of the Closing Date executed by AxoGen Inc in favor of each Lender or such Lender's Affiliates.

**[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Closing Date.

**BORROWER:**

**AXOGEN, INC. (f/k/a LecTec Corporation)**

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: Chief Executive Officer

**AXOGEN CORPORATION**

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: Chief Executive Officer

**AGENT:**

**MIDCAP FINANCIAL SBIC, LP,**
as Agent for Lenders

By: MidCap Financial SBIC GP, LLC

By /s/ Josh Groman
Name: Josh Groman
Title: Managing Director

**LENDERS:**

**MIDCAP FINANCIAL SBIC, LP,**
as a Lender

By: MidCap Financial SBIC GP, LLC

By /s/ Josh Groman
Name: Josh Groman
Title: Managing Director

Address for notices:

MidCap Funding III, LLC
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attention: Portfolio Management- Life Sciences
Fax: (301) 941-1450
E-Mail: Lviera@midcapfinancial.com

with a copy to:

Midcap Financial, LLC
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attention: General Counsel
Fax: (301) 941-1450
E-Mail: Rgoodridge@midcapfinancial.com

**SILICON VALLEY BANK,**
as a Lender

By: /s/ M Scott Mcarty
Name: M. Scott McCarty
Title: Vice President

Address for notices:

3353 Peachtree Road, NE
North Tower, Suite M-10
Atlanta, Georgia 30326
Attention: M. Scott McCarty
Fax: (404) 467-4467
E-mail: smccarty@svb.com

**EXHIBITS AND SCHEDULES**

**EXHIBITS**

| | |
|---|---|
| Exhibit A | Collateral |
| Exhibit B | Loan Payment / Advance Request Form |
| Exhibit C | Compliance Certificate |
| Exhibit D | Secured Promissory Note |
| Exhibit E | Form of Warrant |
| Exhibit F | Form of Pledge Agreement |

**SCHEDULES**

| | |
|---|---|
| Schedule 1 | Lenders and Commitments |
| Schedule 5.1 | Organizational Information |
| Schedule 5.1(a) | Changes in Organizational Information in Past 5 Years |
| Schedule 5.2 | Collateral Disclosures |
| Schedule 5.2(d) | Intellectual Property |
| Schedule 5.2(e) | Locations of Collateral |
| Schedule 5.3 | Litigation |
| Schedule 5.6 | Required Permits and Consents |
| Schedule 5.11 | Products and Required Permits |
| Schedule 6.13 | Post Closing Obligations |
| Schedule 7.4 | Indebtedness |
| Schedule 7.7 | Investments |

**EXHIBIT A**

**COLLATERAL**

The Collateral consists of all assets of Borrower, including all of Borrower's right, title and interest in and to the following personal property:

(a) all goods, Accounts (including health-care insurance receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, investment accounts, commodity accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

(b) all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Agent and Lenders further acknowledge that the Collateral shall not include more than 65% of the voting securities of any Subsidiary that is not organized under the laws of the United States or any of its states (each a "Foreign Subsidiary") if such pledge would cause a material increase in the Borrower's federal income tax liability.

Pursuant to the terms of a certain negative pledge arrangement with Agent and Lenders, Borrower has agreed not to encumber any of its Intellectual Property without Agent's and Lenders' prior written consent.

**EXHIBIT B**

**LOAN PAYMENT/ADVANCE REQUEST FORM**

**DEADLINE IS NOON EASTERN TIME**

Date: , 201

**LOAN PAYMENT:**

From Account # _____ To Account # _____
(Deposit Account #) (Loan Account #)

Principal $_____ and/or Interest $ _____

**Authorized Signature:** _____ Phone Number: _____
Print Name/Title: _____

**LOAN ADVANCE:**

**Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.**

From Account # _____ To Account # _____
(Loan Account #) (Deposit Account #)

Amount of Advance $ _____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further*, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

**Authorized Signature:** _____ Phone Number: _____
Print Name/Title: _____

**OUTGOING WIRE REQUEST:**

**Complete only if all or a portion of funds from the loan advance above is to be wired.**

Beneficiary Name: _____ Amount of Wire: $ _____
Beneficiary Lender: _____ Account Number: _____
City and State: _____

Beneficiary Lender Transit (ABA) #:_____ Beneficiary Lender Code (Swift, Sort, Chip, etc.): _____
**(For International Wire Only)**

Intermediary Lender: _____ Transit (ABA) #: _____
For Further Credit to: _____
Special Instruction: _____

*By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me.*

Authorized Signature: _____ 2nd Signature (if required): _____
Print Name/Title: _____ Print Name/Title: _____
Telephone #: _____ Telephone #: _____

**EXHIBIT C**

**COMPLIANCE CERTIFICATE**

TO: MidCap Financial SBIC, LP, as Agent
FROM:
DATE: _____, 201__

The undersigned authorized officer of AxoGen, Inc., a Minnesota corporation and AxoGen Corporation, a Delaware corporation (either individually or collectively as the context may require, as "**Borrower**") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower, Agent and the Lenders (the "**Agreement**"):

(1) Borrower is in complete compliance with all required covenants for the month ending _____, 201__, except as noted below;

(2) there are no Events of Default;

(3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further,* that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 and 6.4 of the Agreement;

(5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent; and

(6) Borrower is in complete compliance with the financial covenant set forth in Section 6.11 of the Agreement for this Testing Date and attached hereto are computations evidencing Borrower's compliance with the financial covenant set forth in Section 6.11 of the Agreement.

Attached are the required documents supporting the certifications set forth in this Compliance Certificate. The undersigned certifies, in his/her capacity as an officer of the Borrower, that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges, in his/her capacity as an officer of Borrower, that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

| Reporting Covenant | Required | Complies | |
|---|---|---|---|
| Monthly Financial Statements | Monthly within 30 days | Yes | No |
| Audited Financial Statements | Annually within 120 days after FYE | Yes | No |
| Board Approved Projections | Annually within 30 days after FYE | Yes | No |
| Compliance Certificate | Monthly within 30 days | Yes | No |

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

**AXOGEN, INC.**

By: _____
Name: _____
Title: _____

**AXOGEN CORPORATION**

By: _____
Name: _____
Title: _____

**AGENT USE ONLY**

Received by: _____
AUTHORIZED SIGNER
Date: _____

Verified: _____
AUTHORIZED SIGNER
Date: _____

Compliance Status: Yes No

**EXHIBIT D**

**SECURED PROMISSORY NOTE**

(Attached)

**SECURED PROMISSORY NOTE**

$____,000,000.00 September 30, 2011

FOR VALUE RECEIVED, **AXOGEN, INC.**, a Minnesota corporation and **AXOGEN CORPORATION**, a Delaware corporation (collectively, "**Borrower**") hereby promises to pay to the order of _____, or the holder of this Note ("**Lender**"), with an address of 7255 Woodmont Avenue, Suite 200, Bethesda, Maryland 20814, or such other place of payment as the holder of this Secured Promissory Note (this "**Promissory Note**") may specify from time to time in writing, in lawful money of the United States of America, the principal amount of _____ Million and No/100 Dollars ($____,000,000.00), or such other principal amount as Lender has advanced to Borrower under the Loan Agreement (as hereinafter defined), together with interest in accordance therewith (or if and when applicable, at a rate equal to the Default Rate (as defined in the Loan Agreement)) based upon a year consisting of 360 days, with interest computed daily based on the actual number of days in each month until the principal balance is paid in full.

This Promissory Note is executed and delivered in connection with that certain Loan and Security Agreement of even date herewith by and among Borrower, MidCap Financial SBIC, LP, as agent for Lenders, and Lender, and the other lenders named therein from time to time (as the same may from time to time be amended, modified, restated or supplemented in accordance with its terms, the "**Loan Agreement**"), and is entitled to the benefit and security of the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement), to which reference is made for a statement of all of the terms and conditions thereof. All payments shall be made in accordance with the Loan Agreement. All terms defined in the Loan Agreement shall have the same definitions when used herein, unless otherwise defined herein. An Event of Default under the Loan Agreement shall constitute a default under this Promissory Note, and upon any such Event of Default, all principal and interest and other obligations owing under this Promissory Note may be accelerated and declared immediately due and payable as provided for in the Loan Agreement. Reference to the Loan Agreement shall not affect or impair the absolute and unconditional obligation of Borrower to pay all principal and interest and premium, if any, under this Promissory Note as otherwise provided herein.

Borrower waives presentment and demand for payment, notice of dishonor, protest and notice of protest under the Uniform Commercial Code as in effect in the State of Maryland or any applicable law. Borrower agrees to make all payments under this Promissory Note without setoff, recoupment or deduction and regardless of any counterclaim or defense. This Promissory Note has been negotiated and delivered to Lender and is payable in the State of Maryland. This Promissory Note shall be governed by and construed and enforced in accordance with, the laws of the State of Maryland, excluding any conflicts of law rules or principles that would cause the application of the laws of any other jurisdiction. Without limiting the generality of the preceding paragraph, the provisions of Section 11 of the Loan Agreement regarding jurisdiction, venue and jury trial waiver are incorporated herein.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Borrower has caused this Promissory Note to be executed as of the day and year first above written under seal

**AXOGEN, INC.**

By: _____ (SEAL)

Name: _____

Title: _____

**AXOGEN CORPORATION**

By: _____ (SEAL)

Name: _____

Title: _____

**EXHIBIT E**

**WARRANT**

(Attached)

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS PROVIDED HEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, OR SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION IS PERMITTED UNDER RULE 144 OF THE ACT OR IS EXEMPT FROM SUCH REGISTRATION.

**COMMON STOCK PURCHASE WARRANT**

**AXOGEN, INC.**

Warrant Shares: [_____] Issue Date: September 30, 2011

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, [_____], its successors and assigns (together, "Holder") is entitled, at any time on or after the Issue Date specified above and on or prior to the close of business on September 30, 2021 (the "Expiration Date"), to purchase from AxoGen, Inc., a Minnesota corporation (the "Company"), up to [_____] shares (the "Shares") of the Common Stock, par value $[____] per share, of the Company (the "Common Stock") at a purchase price per share equal to $[____] (the "Warrant Price"), subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant in whole or in part by delivering to the Company a duly executed facsimile or electronic (pdf) copy of a Notice of Exercise in substantially the form attached as Appendix 1 (or by delivery of an original or copy of such Notice of Exercise by any other method permitted for providing notices under Article 5.4). Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a certified or bank cashier's check, wire transfer of immediately available funds (to an account designated by the Company), or other form of payment acceptable to the Company, in the amount of the aggregate Warrant Price for the Shares being purchased. As used herein, "Trading Day" means a day on which the principal Trading Market is open for trading, and "Trading Market" means any of the following markets or exchanges on which the Common Stock is or has most recently been listed or quoted for trading on the date in question: the NYSE AMEX, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTC Bulletin Board (or any successors to any of the foregoing).

1.2 Conversion Right. If the Fair Market Value of one Share (as determined pursuant to Article 1.3) is greater than the Warrant Price (at the date of such calculation), then in lieu of exercising this Warrant as specified in Article 1.1, Holder may, at its option, from time to time convert this Warrant, in whole or in part and without any obligation to pay the Warrant Price, into that number of Shares determined by dividing (a) the aggregate Fair Market Value of the Shares or other securities in respect of which this Warrant is being converted minus the aggregate Warrant Price of such Shares by (b) the Fair Market Value of one Share. The Fair

Market Value of one Share shall be determined pursuant to Article 1.3 and this Warrant shall automatically be deemed to be converted as provided in Article 5.7.

1.3 Fair Market Value. "Fair Market Value" shall mean, with respect to one Share for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the average of the daily volume weighted average price of the Common Stock for the ten (10) Trading Days immediately prior to such date (the "10-Day Trailing Average Price") on the principal Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (b) if the National Association of Securities Dealers, Inc. OTC Bulletin Board (the "OTC Bulletin Board") is not a Trading Market, the 10-Day Trailing Average Price on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) as reasonably determined by the Board of Directors of the Company in good faith (provided, that in the event Holder's conversion right under Article 1.2 is exercised or deemed exercised in connection with an Acquisition, the Fair Market Value shall be determined based upon the cash and fair market value of any securities and other consideration as would have been paid for or in respect of each Share issuable (as of immediately prior to the closing of the Acquisition) upon exercise of this Warrant as if such Share had been issued and outstanding on and as of the closing of such Acquisition).

1.4 Delivery of Certificate and New Warrant. Within three (3) Trading Days after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired. The Shares shall be deemed to have been issued, and Holder or any other person designated by Holder to be named therein shall be deemed to have become a holder of record of such Shares for all purposes as of the date the Warrant shall have been exercised or converted. If the Company fails to deliver a certificate or certificates for the Shares as provided herein, in addition to any other remedy available to Holder hereunder, at law or in equity, Holder will have the right to rescind the exercise or conversion of this Warrant.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purposes of this Warrant, "Acquisition" means, whether direct or indirect and whether in one or a series of related transactions, any sale, assignment, exclusive license, transfer or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger, share exchange, or sale of outstanding equity securities of the Company by the holders thereof where the holders of the Company's outstanding voting equity securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting equity securities of the surviving

or successor entity as of immediately after the transaction (other than by the sale of the Company's equity securities for cash proceeds in a public offering or to venture capital investors so long as the Company identifies to Holder the venture capital investors prior to the closing of the transaction) or, if such Company stockholders beneficially own a majority of the outstanding voting equity securities of the surviving or successor entity as of immediately after the transaction, such surviving or successor entity is not the Company.

1.6.2 Treatment of Warrant at Acquisition.

A) Holder agrees that, in the event of an Acquisition in which the sole consideration is cash and/or Marketable Securities, this Warrant shall, subject to Article 5.7, terminate on and as of the closing of such Acquisition to the extent not previously exercised. The Company shall provide Holder with written notice of any proposed Acquisition not later than ten (10) days prior to the closing thereof setting forth the material terms and conditions thereof.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the surviving or successor entity shall assume this Warrant and the obligations of the Company hereunder, and this Warrant shall, from and after such closing, be exercisable for the same class, number and kind of securities, cash and other property as would have been paid for or in respect of the Shares issuable (as of immediately prior to such closing) upon exercise in full hereof as if such Shares had been issued and outstanding on and as of such closing, at an aggregate Warrant Price equal to the aggregate Warrant Price in effect as of immediately prior to such closing (with the Warrant Price being appropriately adjusted and apportioned based upon such securities, cash and other property in order to protect the economic value of this Warrant immediately prior to the closing of such Acquisition); and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the Company shall cause any surviving or successor entity in an Acquisition in which the Company is not the surviving or successor entity to assume in writing all of the obligations of the Company under this Warrant prior to the closing of such Acquisition.

C) As used in this Article 1.6, "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then traded on a Trading Market, and (iii) Holder would not be restricted by contract or by applicable federal and state securities laws from re-selling, within six (6) months and one day following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Common Stock payable in additional shares of the Common Stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Common Stock by

reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Conversion or Substitution. Upon any reclassification, exchange, conversion, substitution or similar event affecting the outstanding shares of the Common Stock, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised in full immediately before such reclassification, exchange, conversion, substitution or similar event, at an aggregate Warrant Price not exceeding the aggregate Warrant Price in effect as of immediately prior thereto. The Company or its successor shall promptly issue to Holder a certificate pursuant to Article 2.6 hereof setting forth the number, class and series or other designation of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, conversion, substitution or similar event. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, conversions, substitutions, and similar events.

2.3 Common Stock Rights and Dividends.

2.3.1 In addition to any adjustments pursuant to Articles 2.1 and 2.2 above, if any time the Company grants, issues or sells any options, warrants, convertible securities or rights to purchase or acquire stock, warrants, securities or other property pro rata to, in each case, all of the record holders of the Common Stock (the "Stock Rights"), then Holder will be entitled to acquire, upon the terms applicable to such Stock Rights, the aggregate Stock Rights which Holder could have acquired if Holder had held the number of Shares acquirable upon complete exercise or conversion of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Stock Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Stock Rights.

2.3.1 If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrant to subscribe for or purchase any security, then in each such case the Warrant Price shall be adjusted by multiplying the Warrant Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the Fair Market Value determined as of the record date mentioned above and of which the numerator shall be such Fair Market Value on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of Common Stock as determined by the Company's board of directors in good faith. Such adjustments shall be described in a statement provided to Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock and shall be made whenever any distribution is made and shall become effective immediately after the record date mentioned above.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, share exchange, dissolution, issue, sale of securities, closing of its stockholder books and records, or any other voluntary action, avoid or seek to avoid the observance or performance of

any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such actions as may be necessary or appropriate to protect Holder's rights under this Warrant against impairment.

2.5 Fractional Shares. No fractional Share shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder cash in the amount computed by multiplying the fractional interest by the Fair Market Value (as determined pursuant to Article 1.3 above) of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Common Stock and/or number of Shares, or upon the occurrence of any transaction or event described in this Article 2, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Common Stock and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Common Stock and number of Shares.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, Holder as follows:

3.1.1 Corporate Existence. The Company is a corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation, has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted, and is qualified as a foreign corporation in all jurisdictions where such qualification is required.

3.1.2 Corporate Authority. The Company has all requisite legal and corporate power and authority to executed, issue and deliver this Warrant, to issue the Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant.

3.1.3 Corporate Action. All corporate action on the part of the Company, its officers, directors and shareholders, necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Shares issuable upon exercise or conversion hereof has been taken and this Warrant constitutes the legally binding and valid obligation of the Company enforceable in accordance with its terms.

3.1.4 No Violation. The execution, delivery and performance of this Warrant will not result in (i) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice, any provision of the Company's Certificate of Incorporation or by-laws, any provision of any judgment, decree, or order to which the Company is a party, by which it is bound, or to which any of its material assets are subject, any contract, obligation or commitment to which the Company is a party or by which it is bound, or (ii) the creation of any lien, charge, encumbrance or restriction on any assets of the Company

3.1.5 Authorized Shares. The Company shall at all times during the term of this Warrant keep reserved out of its authorized and unissued capital stock a sufficient number of shares of Common Stock to permit exercise in full of this Warrant. All Shares which may be issued upon the exercise or conversion of this Warrant shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.3 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company with respect to the Shares issuable hereunder until the exercise or conversion of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF HOLDER. Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable or convertible in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legend. Each certificate representing Shares issued upon any exercise or conversion hereof shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS PROVIDED IN THAT CERTAIN COMMON STOCK PURCHASE WARRANT ISSUED BY THE COMPANY TO MIDCAP FINANCIAL SBIC, LP DATED AS OF SEPTEMBER 30, 2011, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, OR SUCH OFFER, SALE, TRANSFER, PLEDGE OR HYPOTHECATION IS PERMITTED UNDER RULE 144 OF THE ACT OR IS EXEMPT FROM SUCH REGISTRATION.

Notwithstanding the foregoing, neither this Warrant nor any certificate or instrument evidencing this Warrant or the Shares shall bear (and the Company hereby agrees to remove or not to affix, as applicable, as provided herein) any restrictive or other legend, notice or provision (including without limitation the legend included on the first page of this Warrant as of the Issue Date or any similar legend) restricting the sale or transfer of this Warrant or the Shares, in each case at such time as the Holder has provided reasonable evidence to the Company (including any customary broker's or transferring stockholder's letters but expressly excluding an opinion of counsel other than with respect to clauses (D) and (E) below) that: (A) a transfer of this Warrant or the Shares, as applicable, has been made pursuant to SEC Rule 144 (assuming the transferor is not an "affiliate" (as defined in SEC Rule 144) of the Company); (B) the Warrant or the Shares, as applicable, are then eligible for transfer pursuant to SEC Rule 144(b)(i); (C) a transfer of this Warrant or the Shares has been made for no consideration to an affiliate of Holder or has otherwise been made to any affiliate of Holder who is an "accredited investor" as defined in Regulation D promulgated under the Act, and that is otherwise in compliance with all applicable securities laws; (D) in connection with any other sale or transfer, provided that upon the request of the Company, such Holder provides the Company with an opinion of counsel to such Holder, in a reasonably acceptable form to the Company, to the effect that such sale or transfer may be made without registration under the applicable requirements of the Act; or (E) such a legend, notice or provision is not required by, and is not required in order to establish compliance with any provisions of, the Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the Securities & Exchange Commission), provided that upon the request of the Company, such Holder provides the Company with an opinion of counsel to such Holder, in a reasonably acceptable form to the Company, to such effect.

Within three (3) Trading Days of any written request by Holder (together with the original Warrant or the certificate evidencing the Shares, as applicable, and the reasonable evidence described above, and an opinion, if applicable) requesting removal of the legend, notice or provision restricting the sale or transfer of this Warrant or the Shares, as applicable (whether pursuant to a transfer or otherwise under the circumstances described in the preceding sentence), the Company shall remove any such legend, notice or provision restricting the sale or transfer of this Warrant or the Shares, as applicable. For all purposes of Article 1.4, the Company shall not be deemed to have delivered to Holder Shares unless and until the Company shall have fully complied with all of the terms and conditions of this Article 5.2 (if removal has been requested by the Holder in compliance with this Article 5.2).

5.3 Compliance with Securities Laws on Transfer; Transfer Procedure. This Warrant and the Shares may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably

satisfactory to the Company, as reasonably requested by the Company, except as otherwise provided in Section 5.2 above). Subject to the foregoing, upon providing the Company with written notice of the transfer, Holder may transfer all or part of this Warrant (and all rights hereunder) or the Shares issued upon exercise or conversion of this Warrant (or the securities issued upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of such Warrant, Shares and/or other securities being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender such Warrant, and/or the certificate(s) evidencing such Shares (or other securities), properly endorsed to the Company for reissuance to the transferee(s) (and to Holder if applicable). Within a commercially reasonable time after the Company's receipt of the written notice specified herein and compliance with the preceding sentence, the transfer shall be recorded on the books of the Company. Each transferee, by acceptance of the Warrant and/or Shares and/or such other securities hereby (i) acknowledges and agrees (and shall be deemed to have acknowledged and agreed) to the terms of this Warrant and (ii) makes the same representations and warranties to the Company (and shall be deemed to have made the same representations and warranties to the Company) as the initial Holder has made pursuant to this Warrant. The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company.

5.4 Notices; Business Day. Unless otherwise specifically provided herein, all notices, requests, documents or other communications (collectively, "**Communication**") by either the Company or Holder to the other must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail (if an email address is specified herein) or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day. For purposes of this Article 5.4, "Business Day" shall mean any day that is not a Saturday, Sunday or a day on which Holder is closed. Company or Holder may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Article 5.4.

If to Company:

AxoGen, Inc.
13859 Progress Blvd.
Alachua, FL 32615
Attention: Karen Zaderej
Fax: (386) 462-6803
E-Mail: kzaderej@axogeninc.com

with a copy to:

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Attention: Fahd M.T. Riaz, Esq.
Fax: (215) 963-5372
E-Mail: friaz@morganlewis.com

If to Holder:

[_____]

with a copy to:

[_____]

5.5 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.6 Attorneys' Fees; Remedies. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees and disbursements. Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant.

5.7 Automatic Conversion upon Expiration. Provided that the Fair Market Value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is then greater than the Warrant Price then in effect and that Holder does not notify the Company in writing to the contrary prior to such automatic conversion, this Warrant shall, to the extent not previously exercised or converted, automatically be deemed to have been fully converted pursuant to Article 1.2 above (even if not surrendered) as of immediately before any expiration, termination or cancellation of this Warrant, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion, or any consideration payable in respect of such Shares in connection with an Acquisition, if applicable, to Holder or its successor or assigns.

5.8 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with: (a) to the extent applicable, the Minnesota Business Corporation Act, and (b) otherwise for so long as there are any amounts payable pursuant to that certain Loan and Security Agreement, dated as of September 30, 2011, by and among the Company, the lenders referred to therein and MidCap Financial SBIC, LP, as agent for such lenders, the internal domestic laws of the State of Maryland, and thereafter, the internal domestic laws of the state of incorporation of the Company, in each case without giving effect to its principles regarding conflicts of law.

5.10 Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced thereby shall inure to the benefit of and be binding upon the successors and assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of Holder,

and, subject to Section 5.3 hereof, its permitted successors and assigns and shall be enforceable by Holder or such successors or assigns.

5.11 Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

5.12 Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

5.13 Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

5.14 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise or conversion (pursuant to Section 5.7) of this Warrant.

*[Remainder of page left blank intentionally; signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Common Stock Purchase Warrant by their duly authorized representatives as of the date first above written.

COMPANY

AXOGEN, INC.

By: _____

Name: Karen Zaderej

Title: Chief Executive Officer

HOLDER

[_____]

By: _____

Name: _____

(Print)

Title:

APPENDIX 1
TO COMMON STOCK PURCHASE WARRANT

NOTICE OF EXERCISE

TO: AXOGEN, INC.

1. The undersigned hereby elects to purchase Shares of the Common Stock of the Company pursuant to the terms of the Common Stock Purchase Warrant between the undersigned (or the undersigned's predecessor or assignor), and shall tender payment of the exercise price in full, together with all applicable transfer taxes, if any, in accordance with the terms of the Warrant.

2. Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ the cancellation of such number of Shares as is necessary, in accordance with the formula set forth in Article 1.2 of the Warrant, to exercise this Warrant with respect to the maximum number of Shares purchasable pursuant to the cashless exercise procedure set forth in Article 1.2 of the Warrant.

3. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

_____

The Shares shall be delivered by physical delivery of a certificate to:

_____

_____

_____

[SIGNATURE OF HOLDER]

Name of Holder: _____

*Signature of Authorized Signatory of Holder*: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory : _____

Date: _____

**EXHIBIT F**

**PLEDGE AGREEMENT**

(Attached)

## STOCK PLEDGE AGREEMENT

**THIS STOCK PLEDGE AGREEMENT** (this "**Agreement**") is made as of September 30, 2011, by and among **AXOGEN, INC.**, a Minnesota corporation and **AXOGEN CORPORATION**, a Delaware corporation (collectively, the "**Pledgor**"), and **MIDCAP FINANCIAL SBIC, LP**, a Delaware limited partnership, as agent (in such capacity, together with its successors and assigns, "**Agent**") for itself and the other Lenders (as defined herein).

## RECITALS

A. The term "**Borrowers**", as used herein, shall mean collectively each Pledgor and such other borrowers that may become "Borrowers" under the Loan and Security Agreement (as defined herein); the term "**Borrower**", as used herein, shall mean individually each entity that is one of the Borrowers; and the term "Company" as used herein shall mean, individually and collectively, as the context requires, each "Company" as set forth on Schedule I attached hereto, as such Company relates to its respective "Pledgor" as set forth on such schedule.

B. Pursuant to that certain Loan and Security Agreement dated as of even date herewith among Borrowers, the financial institutions from time to time parties thereto, as lenders (collectively, the "**Lenders**"), and Agent (as the same may be amended, supplemented, modified, increased, renewed or restated from time to time, the "**Loan and Security Agreement**"), Agent and Lenders have agreed to make one term loan to Borrowers in an aggregate principal amount of FIVE MILLION AND NO/100 DOLLARS ($5,000,000). Borrowers have executed and delivered one or more promissory notes evidencing the indebtedness incurred by Borrowers under the Loan and Security Agreement (as the same may be amended, modified, increased, renewed or restated from time to time, and together with all renewal notes issued in respect thereof, collectively the "**Notes**"). The terms and provisions of the Loan and Security Agreement and Notes are hereby incorporated by reference in this Agreement.

C. The terms and provisions of the Loan and Security Agreement and Notes are hereby incorporated by reference in this Agreement. This Agreement, the Notes, the Loan and Security Agreement and all of the other documents evidencing, securing and/or governing or executed in connection with the Notes, as the same may be amended, modified, increased, renewed or restated from time to time, are herein referred to collectively as the "**Financing Documents**".

D. The term "**Obligations**", as used herein, means (1) the principal of, and interest on, the Notes and all other sums, fees, charges and expenses due or payable to Agent and the Lenders under this Agreement or the other Financing Documents, (2) all agreements and covenants with and obligations to Agent and the Lenders arising under, out of, or as a result of or in connection with the Financing Documents, (3) all amounts advanced by Agent and the Lenders to preserve, protect, defend, and enforce their rights under this Agreement and the other Financing Documents or in the collateral encumbered by the Financing Documents, and all expenses incurred by Agent in connection therewith and (4) any and all other present and future indebtedness, liabilities and obligations of every kind and nature whatsoever of Borrowers to Agent and Lenders, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, joint or several, both now and hereafter existing, or due or to become due, whether as borrower, guarantor, surety, indemnitor, assignor, pledgor or otherwise. The term "**Loan**" as used herein means the loan transaction or transactions giving rise to the Obligations.

E. In connection with Agent and the Lenders entering into the Loan and Security Agreement and agreeing to make the credit accommodations under the Loan and Security Agreement and as security for all of the Obligations, Agent is requiring that each Pledgor shall have executed and delivered this Agreement.

F. Such Pledgor is a member of, shareholder of, partner in or other equity owner in such applicable Company and, as such, will continue to derive substantial benefit by reason of Lenders making the Loan.

**AGREEMENT**

**NOW, THEREFORE**, to induce Agent and the Lenders to enter into the Loan and Security Agreement and to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and Agent hereby incorporate hereby by this reference the foregoing Recitals and hereby covenant and agree as follows:

**1.** Grant of Assignment and Security Interest. Each Pledgor hereby pledges, assigns and grants to Agent, for the benefit of itself and the Lenders, as security for the Obligations a security interest in the following property of such Pledgor (collectively, the "**Collateral**"), whether now existing or hereafter created or arising:

(a) all of the stock, shares, membership interests, partnership interests and other equity ownership interests in such applicable Company now or hereafter held by such Pledgor (collectively, the "**Ownership Interests**") and all of such Pledgor's rights to participate in the management of such Company, all rights, privileges, authority and powers of such Pledgor as owner or holder of its Ownership Interests in such Company, including, but not limited to, all contract rights, general intangibles, accounts and payment intangibles related thereto, all rights, privileges, authority and powers relating to the economic interests of such Pledgor as owner or holder or its Ownership Interests in such Company, including, without limitation, all investment property, contract rights, general intangibles, accounts and payment intangibles related thereto, all options and warrants of such Pledgor for the purchase of any Ownership Interest in such Company, all documents and certificates representing or evidencing such Pledgor's Ownership Interests in such Company, all of such Pledgor's right, title and interest to receive payments of principal and interest on any loans and/or other extensions of credit made by such Pledgor to such Company, and any other right, title, interest, privilege, authority and power of such Pledgor in or relating to such Company, all whether existing or hereafter arising, and whether arising under any operating agreement, shareholders' agreement, partnership agreement or other agreement, or any bylaws, certificate of formation, articles of organization or other organization or governing documents of such Company (as the same may be amended, modified or restated from time to time) or otherwise, or at law or in equity and all books and records of such Pledgor pertaining to any of the foregoing and all options, warrants, distributions, investment property, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests, and such Pledgor shall promptly thereafter deliver to Agent a certificate duly executed by such Pledgor describing such percentage interests, options or warrants and certifying that the same have been duly pledged hereunder;

(b) all rights to receive cash distributions, profits, losses and capital distributions (including, but not limited to, distributions in kind and liquidating dividends and distributions) and any other rights and property interests related to the Ownership Interests;

(c) all other securities, instruments or property (including cash) paid or distributed in respect of or in exchange for the Ownership Interests, whether or not as part of or by way of spin-off, merger, consolidation, dissolution, reclassification, combination or exchange of stock (or other Ownership Interests), asset sales, or similar rearrangement or reorganization or otherwise; and

(d) all proceeds (both cash and non-cash) of the foregoing, whether now or hereafter arising with respect to the foregoing.

**2.** Registration of Pledge in Books of Company; Application of Proceeds. Each Pledgor hereby authorizes and directs the applicable Company to register such Pledgor's pledge to Agent, for its benefit and the benefit of the Lenders, of the Collateral on the books of such applicable Company and, following written notice to do so by Agent after the occurrence and during the continuance of an Event of Default (as hereinafter defined) under this Agreement, to make direct payment to Agent of any amounts due or to become due to such Pledgor with respect to the Collateral. Any moneys received by Agent shall be applied to the Obligations in such order and manner of application as Agent may from time to time determine in its sole discretion.

**3.** Rights of Pledgor in the Collateral. So long as no Event of Default has occurred and is continuing under this Agreement, each Pledgor shall be entitled to exercise all voting rights and to receive all dividends and other distributions that may be paid on any Collateral and that are not otherwise prohibited by the Financing Documents. Any cash dividend or distribution payable in respect of the Collateral that is, in whole or in part, a return of capital or that is made in violation of this Agreement or the Financing Documents shall be received by such Pledgor in trust for Agent, for its benefit and the benefit of the Lenders, shall be paid immediately to Agent and shall be retained by Agent as part of the Collateral. Upon the occurrence and during the continuation of an Event of Default, each Pledgor shall, at the written direction of Agent, immediately send a written notice to the applicable Company instructing such applicable Company, and shall cause such applicable Company, to remit all cash and other distributions payable with respect to the Ownership Interests (until such time as Agent notifies such Pledgor that such Event of Default has ceased to exist) directly to Agent. Nothing contained in this paragraph shall be deemed to permit the payment of any sum or the making of any distribution which is prohibited by any of the Financing Documents, if any.

**4.** Representations and Warranties of Pledgor. Each Pledgor hereby warrants to Agent as follows:

(a) Schedule I and Schedule II are true, correct and complete in all respects;

(b) All of the pledged Ownership Interests of each Pledgor (the "**Pledged Interests**") are in certificated form, and are registered in the name of such applicable Pledgor;

(c) The Pledged Interests constitute at least the percentage of all the issued and outstanding Ownership Interests of such applicable Company as set forth on Schedule I;

(d) The Pledged Interests listed on Schedule I are the only Ownership Interests of each applicable Company in which such Pledgor has any rights;

(e) All certificates evidencing the Pledged Interests of each Pledgor have been delivered to Agent;

(f) Pledgor has good and marketable title to the Collateral. Pledgor is the sole owner of all of the Collateral, free and clear of all security interests, pledges, voting trusts, agreements, liens, claims and encumbrances whatsoever, other than the security interests, assignments and liens granted under this Agreement;

(g) No Pledgor has heretofore transferred, pledged, assigned or otherwise encumbered any of its rights in or to the Collateral;

(h) No Pledgor is prohibited under any agreement with any other person or entity, or under any judgment or decree, from the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(i) No action has been brought or threatened that might prohibit or interfere with the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(j) Each Pledgor has full power and authority to execute and deliver this Agreement, and the execution and delivery of this Agreement do not conflict with any agreement to which any Pledgor is a party or any law, order, ordinance, rule, or regulation to which any Pledgor is subject or by which it is bound and do not constitute a default under any agreement or instrument binding upon any Pledgor; and

(k) This Agreement has been properly executed and delivered and constitutes the valid and legally binding obligation of each Pledgor and is fully enforceable against each Pledgor in accordance with its terms.

**5.** Covenants of Pledgor. Each Pledgor hereby covenants and agrees as follows:

(a) To do or cause to be done all things necessary to preserve and to keep in full force and effect its interests in the Collateral, and to defend, at its sole expense, the title to the Collateral and any part of the Collateral;

(b) To cooperate fully with Agent's efforts to preserve the Collateral and to take such actions to preserve the Collateral as Agent may in good faith direct;

(c) To cause each applicable Company to maintain proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to the Collateral and which reflect the lien of Agent on the Collateral;

(d) To deliver immediately to Agent any certificates that may be issued following the date of this Agreement representing the Ownership Interests or other Collateral, and to execute and deliver to Agent one or more transfer powers, substantially in the form of Schedule III attached hereto or otherwise in form and content satisfactory to Agent, pursuant to which such Pledgor assigns, in blank, all Ownership Interests and other Collateral (the "**Transfer Powers**"), which such Transfer Powers shall be held by Agent as part of the Collateral;

(e) To execute and deliver to Agent such financing statements as Agent may request with respect to the Ownership Interests, and to take such other steps as Agent may from time to time reasonably request to perfect Agent's security interest in the Ownership Interests under applicable law;

(f) Not to sell, discount, allow credits or allowances, assign, extend the time for payment on, convey, lease, assign, transfer or otherwise dispose of the Collateral or any part of the Collateral;

(g) After an Event of Default under the Financing Documents (including but not limited to this Agreement), not to receive any dividend or distribution or other benefit with respect to such applicable Company, and not to vote, consent, waive or ratify any action taken, that would violate or be inconsistent with any of the terms and provisions of this Agreement, or any of the Financing Documents

or that would materially impair the position or interest of Agent in the Collateral or dilute the Ownership Interests pledged to Agent under this Agreement;

(h) Not to sell or otherwise dispose of, or create, incur, assume or suffer to exist any lien upon any of the Collateral, other than liens in favor of Agent, for its benefit and the benefit of the Lenders;

(i) That such Pledgor will, upon obtaining ownership of any other Ownership Interests otherwise required to be pledged to Agent, for its benefit and the benefit of the Lenders, pursuant to any of the Financing Documents, which Ownership Interests are not already Pledged Interests, within five (5) Business Days deliver to Agent a Pledge Amendment, duly executed by such Pledgor, in substantially the form of Schedule IV hereto (a "**Pledge Amendment**") in respect of any such additional Ownership Interests pursuant to which such Pledgor shall pledge to Agent, for its benefit and the benefit of the Lenders, all of such additional Ownership Interests. Prior to the delivery thereof to Agent, all such additional Ownership Interests shall be held by such Pledgor separate and apart from its other property and in express trust for Agent, for its benefit and the benefit of the Lenders; and

(j) That such Pledgor consents to the admission of Agent (and its assigns or designee) as a member, partner or stockholder of Company upon Agent's acquisition of any of the Ownership Interests.

**6.** Rights of Agent. Agent may from time to time and at its option (a) require each Pledgor to, and each Pledgor shall, periodically deliver to Agent records and schedules, which show the status of the Collateral and such other matters which affect the Collateral; (b) verify the Collateral and inspect the books and records of Company and make copies of or extracts from the books and records; and (c) notify any prospective buyers or transferees of the Collateral of Agent's interest in the Collateral. Each Pledgor agrees that Agent may at any time take such steps as Agent deems reasonably necessary to protect Agent's interest in and to preserve the Collateral. Each Pledgor hereby consents and agrees that Agent may at any time or from time to time pursuant to the Loan and Security Agreement (a) extend or change the time of payment and/or the manner, place or terms of payment of any and all Obligations, (b) supplement, amend, restate, supercede, or replace the Loan and Security Agreement or any other Financing Documents, (c) renew, extend, modify, increase or decrease loans and extensions of credit under the Loan and Security Agreement, (d) modify the terms and conditions under which loans and extensions of credit may be made under the Loan and Security Agreement, (e) settle, compromise or grant releases for any Obligations and/or any person or persons liable for payment of any Obligations, (f) exchange, release, surrender, sell, subordinate or compromise any collateral of any party now or hereafter securing any of the Obligations and (g) apply any and all payments received from any source by Agent at any time against the Obligations in any order as Agent may determine pursuant to the terms of the Loan and Security Agreement; all of the foregoing in such manner and upon such terms as Agent may determine and without notice to or further consent from any Pledgor and without impairing or modifying the terms and conditions of this Agreement which shall remain in full force and effect, provided, that such is done pursuant to its rights and the terms of the Loan and Security Agreement.

This Agreement shall remain in full force and effect and shall not be limited, impaired or otherwise affected in any way by reason of (i) any delay in making demand on any Pledgor for or delay in enforcing or failure to enforce, performance or payment of any Obligations, (ii) any failure, neglect or omission on Agent's part to perfect any lien upon, protect, exercise rights against, or realize on, any property of any Pledgor or any other party securing the Obligations, (iii) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any person or persons or in any property, (iv) the invalidity or unenforceability of any Obligations or rights in any Collateral under the Loan and Security Agreement, (v) the existence or nonexistence of any defenses which may be available to any

Pledgor with respect to the Obligations, or (vi) the commencement of any bankruptcy, reorganization; liquidation, dissolution or receivership proceeding or case filed by or against any Pledgor or any Borrower.

**7.** Events of Default. The occurrence of any one or more of the following events shall constitute an event of default (an "**Event of Default**") under this Agreement:

(a) the failure of any Pledgor to perform, observe, or comply with any of the provisions of this Agreement, where such failure shall remain uncured for a period of ten (10) days after the date of written notice from Agent to such Pledgor;

(b) any representation, warranty or information made or given in this Agreement or in any report, statement, schedule, certificate, opinion (including any opinion of counsel for any Pledgor), financial statement or other document furnished by any Pledgor in connection with this Agreement shall prove to have been false or misleading when made or given in any material respect; or

(c) the occurrence of an Event of Default (as defined in any of the Financing Documents) or the continuance of any default under the Financing Documents beyond any applicable grace or cure period provided for therein.

**8.** Rights of Agent Following Event of Default. Upon the occurrence and during the continuance of an Event of Default under this Agreement (and in addition to all of its other rights, powers and remedies under this Agreement), Agent may, at its option, without notice to any Pledgor or any other party, do any one or more of the following:

(a) Declare any unpaid balance of the Obligations to be immediately due and payable (the occurrence or nonoccurrence of an Event of Default shall in no manner impair the ability of Agent to demand payment of any portion of the Obligations that is payable upon demand);

(b) Proceed to perform or discharge any and all of any Pledgor's obligations, duties, responsibilities, or liabilities and exercise any and all of its rights in connection with the Collateral for such period of time as Agent may deem appropriate, with or without the bringing of any legal action in or the appointment of any receiver by any court;

(c) Do all other acts which Agent may deem necessary or proper to protect Agent's security interest in the Collateral and carry out the terms of this Agreement;

(d) Exercise all voting and management rights of any Pledgor as to such applicable Company or otherwise pertaining to the Collateral, and each Pledgor, forthwith upon the request of Agent, shall use its best efforts to secure, and cooperate with the efforts of Agent to secure (if not already secured by Agent), all the benefits of such voting and management rights.

(e) Sell the Collateral in any manner permitted by the UCC; and upon any such sale of the Collateral, Agent may (i) bid for and purchase the Collateral and apply the expenses of such sale (including, without limitation, attorneys' fees) as a credit against the purchase price, or (ii) apply the proceeds of any sale or sales to other persons or entities, in whatever order Agent in its sole discretion may decide, to the expenses of such sale (including, without limitation, attorneys' fees), to the Obligations, and the remainder, if any, shall be paid to such applicable Pledgor or to such other person or entity legally entitled to payment of such remainder; and

(f) Proceed by suit or suits in law or in equity or by any other appropriate proceeding or remedy to enforce the performance of any term, covenant, condition, or agreement contained in this Agreement, and institution of such a suit or suits shall not abrogate the rights of Agent to pursue any other remedies granted in this Agreement or to pursue any other remedy available to Agent either at law or in equity.

Agent shall have all of the rights and remedies of a secured party under the UCC and other applicable laws. All costs and expenses, including reasonable attorneys' fees and expenses, incurred or paid by Agent in exercising or protecting any interest, right, power or remedy conferred by this Agreement, shall bear interest at a per annum rate of interest equal to the then highest rate of interest charged on any of the Obligations from the date of payment until repaid in full and shall, along with the interest thereon, constitute and become a part of the Obligations secured by this Agreement.

Each Pledgor hereby constitutes and appoints Agent or any of its agents as the attorney-in-fact of such Pledgor after the occurrence and during the continuance of an Event of Default under the Financing Documents (including but not limited to this Agreement) to take such actions and execute such documents as Agent may deem appropriate in the exercise of the rights and powers granted to Agent in this Agreement, including, but not limited to, filling-in blanks in the Transfer Power to cause a transfer of the Ownership Interests and other Collateral pursuant to a sale of the Collateral. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment in full of the Obligations. Each Pledgor shall indemnify and hold Agent harmless for all losses, costs, damages, fees, and expenses suffered or incurred in connection with the exercise of this power of attorney and shall release Agent from any and all liability arising in connection with the exercise of this power of attorney.

**9.** Performance by Agent. If any Pledgor shall fail to perform, observe or comply with any of the conditions, terms, or covenants contained in this Agreement or any of the other Financing Documents, Agent, without notice to or demand upon any Pledgor and without waiving or releasing any of the Obligations or any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms or covenants for the account and at the expense of such Pledgor, and may enter upon the premises of such Pledgor for that purpose and take all such action on the premises as Agent may consider necessary or appropriate for such purpose. All sums paid or advanced by Agent in connection with the foregoing and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the foregoing, together with interest thereon at a per annum rate of interest equal to the then highest rate of interest charged on the principal of any of the Obligations, from the date of payment until repaid in full, shall be paid by Pledgor to Agent on demand and shall constitute and become a part of the Obligations secured by this Agreement.

**10.** Indemnification. Agent shall not in any way be responsible for the performance or discharge of, and Agent does not hereby undertake to perform or discharge, any obligation, duty, responsibility, or liability of any Pledgor in connection with the Collateral or otherwise. Each Pledgor hereby agrees to indemnify Agent and hold Agent harmless from and against all losses, liabilities, damages, claims, or demands suffered or incurred by reason of this Agreement or by reason of any alleged responsibilities or undertakings on the part of Agent to perform or discharge any obligations, duties, responsibilities, or liabilities of any Pledgor in connection with the Collateral or otherwise; *provided, however*, that the foregoing indemnity and agreement to hold harmless shall not apply to losses, liabilities, damages, claims, or demands suffered or incurred by reason of Agent's own gross negligence or willful misconduct. Agent shall have no duty to collect any amounts due or to become due in connection with the Collateral or enforce or preserve any Pledgor's rights under this Agreement.

**11.** Termination. Upon payment in full of the Obligations, and termination of any further obligation of Agent and the Lenders to extend any credit to Borrower under the Financing Documents, this Agreement shall terminate and Agent shall promptly execute appropriate documents to evidence such termination.

**12.** Release. Without prejudice to any of Agent's rights under this Agreement, Agent may take or release other security for the payment or performance of the Obligations, may release any party primarily or secondarily liable for the Obligations, and may apply any other security held by Agent to the satisfaction of the Obligations.

**13.** Pledgor's Liability Absolute. The liability of each Pledgor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against any Pledgor or any other person, nor against other securities or liens available to Agent or Agent's respective successors, assigns, or agents. Each Pledgor waives any right to require that resort be had to any security or to any balance of any deposit account or credit on the books of Agent in favor of any other person.

**14.** Preservation of Collateral. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral and in preserving rights under this Agreement if Agent takes action for those purposes as such Pledgor may reasonably request in writing, *provided, however*, that failure to comply with any such request shall not, in and of itself, be deemed a failure to exercise reasonable care, and no failure by Agent to preserve or protect any rights with respect to the Collateral or to do any act with respect to the preservation of the Collateral not so requested by such Pledgor shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

**15.** Private Sale. Each Pledgor recognizes that Agent may be unable to effect a public sale of the Collateral by reason of certain provisions contained in the federal Securities Act of 1933, as amended, and applicable state securities laws and, under the circumstances then existing, may reasonably resort to a private sale to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Collateral for their own account for investment and not with a view to the distribution or resale of the Collateral. Each Pledgor agrees that a private sale so made may be at a price and on other terms less favorable to the seller than if the Collateral were sold at public sale and that Agent has no obligation to delay sale of the Collateral for the period of time necessary to permit such Pledgor, even if such Pledgor would agree to register or qualify the Collateral for public sale under the Securities Act of 1933, as amended, and applicable state securities laws. Each Pledgor agrees that a private sale made under the foregoing circumstances and otherwise in a commercially reasonable manner shall be deemed to have been made in a commercially reasonable manner under the UCC.

**16.** General.

(a) Final Agreement and Amendments. This Agreement, together with the other Financing Documents, constitutes the final and entire agreement and understanding of the parties and any term, condition, covenant or agreement not contained herein or therein is not a part of the agreement and understanding of the parties. Neither this Agreement, nor any term, condition, covenant or agreement hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(b) Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise

of any such right shall be deemed a waiver as to any other such instance, or any other such right. No single or partial exercise of any power or right shall preclude other or further exercise of the power or right or the exercise of any other power or right. No course of dealing between the parties hereto shall be construed as an amendment to this Agreement or a waiver of any provision of this Agreement. No notice to or demand on any Pledgor in any case shall thereby entitle such Pledgor to any other or further notice or demand in the same, similar or other circumstances.

(c) Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

(d) Construction. As used herein, all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Agreement. The Recitals are incorporated herein as a substantive part of this Agreement and the parties hereto acknowledge that such Recitals are true and correct.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns hereunder. In the event of any assignment or transfer by Agent of any of any Pledgor's obligations under the Financing Documents or the collateral therefor, Agent thereafter shall be fully discharged from any responsibility with respect to such collateral so assigned or transferred, but Agent shall retain all rights and powers given by this Agreement with respect to any of any Pledgor's obligations under the Financing Documents or collateral not so assigned or transferred. No Pledgor shall have the right to assign or delegate its rights or obligations hereunder.

(f) Severability. If any term, provision, covenant or condition of this Agreement or the application of such term, provision, covenant or condition to any party or circumstance shall be found by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such term, provision, covenant, or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

(g) Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 10 of the Loan and Security Agreement. All notices to each Pledgor shall be addressed in accordance with the information provided on the signature page hereto.

(h) Remedies Cumulative. Each right, power and remedy of Agent as provided for in this Agreement, or in any of the other Financing Documents or now or hereafter existing by law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement, or in any of the other Financing Documents now or hereafter existing by law, and the exercise or beginning of the exercise by Agent of any one or more of such rights, powers or remedies shall not preclude the later exercise by Agent of any other rights, powers or remedies.

(i) Time of the Essence; Survival; Joint and Several Liability. Time is of the essence of this Agreement and each and every term, covenant and condition contained herein. All covenants, agreements, representations and warranties made in this Agreement or in any of the other Financing Documents shall continue in full force and effect so long as any of the obligations of any party under the Financing Documents (other than Agent) remain outstanding. Each person or entity

constituting Pledgor shall be jointly and severally liable for all of the obligations of Pledgor under this Agreement.

(j) Further Assurances. Each Pledgor hereby agrees that at any time and from time to time, at the expense of Pledgor, each Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Agent or any of its agents to exercise and enforce its rights and remedies under this Agreement with respect to any portion of such collateral.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which shall constitute one in the same instrument. As used in this Agreement, the term "this Agreement" shall include all attachments, exhibits, schedules, riders and addenda.

(l) Costs. Pledgor shall be responsible for the payment of any and all reasonable fees, costs and expenses which Agent may incur by reason of this Agreement, including, but not limited to, the following: (i) any taxes of any kind related to any property or interests assigned or pledged hereunder; (ii) expenses incurred in filing public notices relating to any property or interests assigned or pledged hereunder; and (iii) any and all costs, expenses and fees (including, without limitation, reasonable attorneys' fees and expenses and court costs and fees), whether or not litigation is commenced, incurred by Agent in protecting, insuring, maintaining, preserving, attaching, perfecting, enforcing, collecting or foreclosing upon any lien, security interest, right or privilege granted to Agent or any obligation of any Pledgor under this Agreement, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to this Agreement or any property or interests assigned or pledged hereunder.

(m) No Defenses. Each Pledgor's obligations under this Agreement shall not be subject to any set-off, counterclaim or defense to payment that such Pledgor now has or may have in the future.

(n) Cooperation in Discovery and Litigation. In any litigation, trial, arbitration or other dispute resolution proceeding relating to this Agreement, all directors, officers, employees and agents of each Pledgor or of its affiliates shall be deemed to be employees or managing agents of such Pledgor for purposes of all applicable law or court rules regarding the production of witnesses by notice for testimony (whether in a deposition, at trial or otherwise). Each Pledgor will use commercially reasonable efforts to produce in any dispute resolution proceeding, at the time and in the manner reasonably requested by Agent, all persons and entities, documents (whether in tangible, electronic or other form) or other things under its control and relating to the dispute.

(o) Termination. Upon the Termination Date (as defined below), this Agreement shall terminate and Pledgor shall be entitled to the return, at Pledgor's expense, of such of the Collateral as has not theretofore been sold, disposed of or otherwise applied pursuant to this Agreement or any of the other Financing Documents, including, without limitation and to the extent applicable, all of the documents and certificates representing or evidencing the Pledgor's Ownership Interests in Axogen Corporation, a Delaware corporation. For the purposes of this Section 16(o), "Termination Date" shall mean the date on which (i) the Term Loan has been repaid in full in cash, (b) all other Obligations under the Loan and Security Agreement and the other Financing Documents (other than the Warrants) have been completely discharged (other than contingent indemnification obligations) and (c) the Lenders shall not have any further obligation to make loans or grant extensions of credit under the Loan and Security Agreement.

(p) **CHOICE OF LAW; CONSENT TO JURISDICTION. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), EACH PLEDGOR HEREBY (A) SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE AGENT FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. EACH PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OR PROCESS IN ANY PROCEEDING IN ANY MARYLAND STATE OR UNITED STATES COURT SITTING IN THE STATE OF MARYLAND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO SUCH PLEDGOR AT THE ADDRESS INDICATED HEREIN, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PLEDGOR SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.**

**17. WAIVER OF JURY TRIAL. EACH PLEDGOR HEREBY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY EACH PLEDGOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF EACH PLEDGOR'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, EACH PLEDGOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF AGENT (INCLUDING THEIR RESPECTIVE COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO SUCH PLEDGOR THAT AGENT WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.**

*[Signature Pages Follow*]

**IN WITNESS WHEREOF**, intending to be legally bound, and intending that this agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

**PLEDGORS:**

**AXOGEN, INC.**

By: _____ (SEAL)
Name: Karen Zaderej
Title: Chief Executive Officer

**AXOGEN CORPORATION**

By: _____ (SEAL)
Name: Karen Zaderej
Title: Chief Executive Officer

**Pledgor Contact Information:**

AxoGen, Inc.
AxoGen Corporation
13859 Progress Blvd.
Alachua, FL 32614
Attention: Karen Zaderej
Fax: (386) 462-6803
E-Mail: kzaderej@axogeninc.com

**AGENT:**

**MIDCAP FINANCIAL SBIC, LP**, a Delaware limited partnership

By: MidCap Financial SBIC GP, LLC

By: _____ (SEAL)
Name: _____
Its: _____

**Exhibit 10.8.1**

# EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made and effective as of the date first written below, by and between AXOGEN CORPORATION, a Florida corporation ("AXOGEN"), and Karen L. Zaderej ("Employee").

## RECITALS:

A. AXOGEN believes it is in AXOGEN's best interest to employ Employee, and Employee desires to be employed by AXOGEN.

B. 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, all upon the terms and conditions set forth in this Agreement, including those set forth in the attached Schedules and Exhibits.

(a) Terms of Employment. The terms of Employee's employment are set forth on Schedule 1 of this Agreement, which is attached to this Agreement, and incorporated in this Agreement by reference.

(b) Compensation and Benefits. The compensation and benefits to which Employee shall be entitled pursuant to this Agreement are set forth on Schedule 2 of this Agreement, which is attached to this Agreement, and incorporated in this Agreement 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 in the form of Exhibit "A" to this Agreement (the "Invention Assignment").

3. Non-Competition Agreement. Contemporaneously with the execution and delivery of this Agreement, Employee shall enter into a Non-Competition and Non-Solicitation Agreement in the form of Exhibit "B" to this Agreement (the "Non-Competition Agreement").

4. Termination.

(a) AXOGEN's Rights to Terminate. AXOGEN shall have the right to terminate the Employment Period (as defined in Schedule 1 of this Agreement) for:

(i) any reason or no reason prior to September 1, 2007;

(ii) Substantial Cause (as defined in Section 4(b) below);

(iii) Employee's Permanent Disability (as defined in Section 4(c) below); and

(iv) the death of Employee.

(b) Substantial Cause. As used in this Agreement, the term "Substantial Cause" shall mean:

(i) the commission by Employee of any act of fraud, theft, or embezzlement; or

(ii) 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;

(iii) 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;

(iv) material failure to adhere to AxoGen'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;

(v) failure to meet reasonable performance standards as determined by AxoGen.

(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 three (3) consecutive months or collectively for three (3) months during any period of six (6) consecutive months.

(d) Notice of Termination.

(i) Substantial Cause. If AXOGEN terminates the Employment Period for Substantial Cause, the termination shall be effective immediately upon delivery of written notice of termination from AXOGEN to Employee.

(ii) Permanent Disability. If AXOGEN terminates the Employment Period by reason of the Permanent Disability of Employee, the termination shall be effective thirty (30) days after the delivery by AXOGEN to Employee of written notice of termination of employment by AXOGEN.

(iii) Death of Employee. In the event of death of Employee, such notice of termination shall not be required, and Employee's termination of shall be effective as of the date of Employee's death.

(e) Employee's Right to Terminate. Employee shall have the right to terminate the Employment Period (i) with thirty (30) days' notice to AXOGEN, for any reason, or for no reason, (ii) pursuant to Section 6(b) or (iii) upon ten (10) days written notice to AXOGEN if AXOGEN breaches this Agreement and AXOGEN does not cure such breach within such ten (10) day period.

5. Indemnification. AXOGEN agrees that it shall indemnify Employee and hold Employee harmless from and against any and all liability incurred in connection with the performance of Employee's duties and responsibilities to AXOGEN including, without limitation, liability resulting from any actual or alleged breach or neglect of duty, error, negligence, omission of a statement or misleading statement or any work as a supervisor/manager of any personnel of AXOGEN, but excluding any grossly negligent, intentional or willful act or omission of Employee that is outside her authority as an Employee of the Company. Said indemnification shall continue during Employee's employment and thereafter to provide Employee with the indemnification that she enjoyed during the time of her employment with the company.

6. Severance Pay. If (i) AXOGEN terminates the Employment Period for any reason other than Substantial Cause, Permanent Disability or death of Employee or (ii) Employee terminates the Employment Period due to AXOGEN's breach of this Agreement and failure to cure such breach within ten (10) days following notice of such breach, Employee shall be entitled to severance pay from AXOGEN in an amount equal to the Base Salary due to Employee for the remaining duration of the Employment Period or the length of the No-compete Period, whichever is longer, determined at the rate of Employee's Base Salary as of the date of termination. In addition, Employee shall be entitled, to all the Benefits and Bonus for the remaining duration of the Employment Period.

7. 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, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of AXOGEN representing fifty percent (50%) or more of the combined voting power of the securities of AXOGEN 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 AXOGEN (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 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 consolidates or merges with another company and AXOGEN is not the continuing or surviving corporation; or

(iv) shares of AXOGEN's common stock are converted into cash, securities, or other property, other than by a merger of AXOGEN, pursuant to Section 6(a)(iii), in which the holders of the AXOGEN'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 sells, leases, exchanges, or otherwise transfers all or substantially all of its assets (in one transaction or in a series of related transactions); or

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

(b) Employee's Right To Terminate. Employee shall have the right to terminate the Employment Period at any time following a Change in Control. If Employee terminates the Employment Period within six (6) months of such a Change in Control, he shall be entitled to the severance payments provided for in Section 6.

(c) Payment of Liquidated Damages. Any payments due to Employee pursuant to this Section 6 shall be paid by AXOGEN or its successor on the fifth (5th) day following the effective date of Employee's termination of the Employment Period.

8. Surrender of Records and all Company Property. Upon the termination of the Employment Period pursuant to this Agreement, Employee agrees to return to AXOGEN, in good condition, any records or documents related to AXOGEN in Employee's control or possession as well as any and all other Company Property in the Employee's control or possession.

9. Miscellaneous Provisions.

A. Amendments to this Agreement only in Writing. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a written agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought, and making specific reference to this Agreement.

B. Assignments. Employee shall not assign Employee's rights and/or obligations pursuant to this Agreement. AXOGEN may assign its rights and/or obligations pursuant to this Agreement at any time without prior notice to Employee.

C. Binding Effect. All of the terms and provisions of this Agreement, 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 other Agreement 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 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 4 through 9 (inclusive) 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, 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, and any waiver by Company of any breach of any provision of this Agreement 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.

G. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex, telegraphic communication, and electronic communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, electronically transmitted, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Employee:

Karen Zaderej

With a Copy to:

Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive, Suite 500 E
West Palm Beach, Florida 33401
Fax: (561) 655-5677
Attn: David G. Bates, Esq.

If to the Company:

AXOGEN CORPORATION
PO Box 357787
Gainesville, FL 32635-7787
Attn: Board of Directors

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date telecommunicated if by telegraph, (c) on the date of transmission with confirmed answer back if by telex or electronically transmitted, and (d) on the date upon which the return receipt is signed or 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 all transactions contemplated by this Agreement 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 Shall be in Alachua County. The parties acknowledge that a substantial portion of negotiations anticipated performance and execution of this Agreement occurred or shall occur in Alachua County, Florida, and each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement 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) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees 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 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 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 shall preclude any other or further exercise of such right, power or remedy.

K. This Agreement Represents the Entire Agreement Between Employee and AXOGEN Relating to this Subject Matter. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter contained in this Agreement, and supersedes all other negotiations, understandings and representations (if any) made by and between the parties.

EMPLOYEE AND AXOGEN have executed this Agreement as of the 15 day of October, 2007.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms
Name: Jamie M. Grooms
Title: CEO

**EMPLOYEE:**

/s/ Karen Zaderej
Print Name: Karen Zaderej

**SCHEDULE AND EXHIBIT LIST**

Schedule 1 - Terms of Employment
Schedule 2 - Compensation and Benefits
Exhibit A - Invention Assignment and Confidentiality Agreement
Exhibit B - Non-Solicitation and Non-Compete Agreement

**SCHEDULE**
**TERMS OF EMPLOYMENT**

The terms of Employee's employment by AXOGEN CORPORATION ("AXOGEN") are as follows:

1. Employee's Title: AXOGEN hereby employs Employee as its Vice President of Marketing and Sales, which title may change at AxoGen discretion.

2. Term of Employment. Unless terminated pursuant to the provisions of the Executive Employment Agreement (the "Agreement"), the term of Employee's employment under the Agreement shall be for one (1) year from the date of the Agreement (the "Employment Period"). The Agreement shall automatically renew for successive one (1) year periods unless either AXOGEN or Employee elect not to renew the Agreement with thirty (30) days written notice prior to the end of the then current Employment Period.

3. Employee's Duties: During the Employment Period:

(a) Description. Employee shall perform all duties in connection with Employee's position, or as otherwise designated by AXOGEN, including, without limitation creating sales and marketing strategies, implementing sales and marketing strategies, generating and growing product sales, managing the scientific advisory board, managing sales and marketing personnel, ensuring regulatory compliance, engaging in product development activities, helping to manage strategic relationships, executing general and administrative work, and other activities assigned to Employee by AXOGEN.

(b) Report to AXOGEN Designated Manager. Employee shall report to an AXOGEN designated Manager with regard to the performance of all Employee's duties.

(c) Compliance With Employee Policies. Employee shall comply with all material AXOGEN policies for employees as such policies 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 the Employment Period, 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 where the form or manner of such investment will not require services on the part of Employee that conflict with the duties of Employee, and in which Employee's participation is solely that of a passive investor.

(iii) All commissions, fees or other income earned and received by Employee, if any, in furtherance of the business of AXOGEN, or its affiliates, or from any other

business or financial opportunity or endeavor in which Employee is an active participant and not a passive investor pursuant to Section 3(d)(ii) above, shall be accepted by Employee for the account of AXOGEN, and shall be remitted to AXOGEN within three (3) days of Employee's receipt of the same.

(e) Compliance With AXOGEN's Rules. 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"), throughout the Employment Period (as defined in Schedule 1 of the Agreement), Employee shall be entitled to receive from AXOGEN CORPORATION ("AXOGEN") the following compensation and benefits:

1. Base Salary.

(a) Amount. Employee shall be entitled to receive salary during the Employment Period at the rate of One Hundred Seventy Thousand dollars ($170,000) per year, (the "Base Salary") effective upon execution and delivery of the Agreement.

(b) Payment. The Base Salary shall be payable in accordance with the current normal payroll policies of AXOGEN, which policies may be changed by AXOGEN from time to time in 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 not less than annually, and AXOGEN may increase or decrease the Base Salary in its sole discretion.

(d) Additional Compensation. In addition to the Base Salary paid to Employee during the Employment Period, Employee shall be entitled to receive the Benefits and the Bonus (as those terms are defined below) during the Employment Period.

2. Business Expenses and Reimbursements. Employee shall be entitled to 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.

3. Stock Options. Employee may receive stock options in accordance with the terms of the Employee's Incentive Stock Option Agreement. In the event of a Change in Control, all stock options fully vest effective on the date of Change in Control.

4. Car Allowance. During the Employment Period, Employee may be reimbursed for automobile expenses in accordance with AXOGEN's normal automobile allowance payment practices, as in existence from time to time to any of its similar level employees, and the Employee shall supply AXOGEN with accurate invoices of all expenses submitted for reimbursement pursuant to this Section.

5. Benefits. Employee shall be entitled to receive benefits during the entire Employment Period, provided at any time by AXOGEN to any of its similar level employees, as determined by AxoGen Board of Directors, including health insurance, dental plan, disability insurance, and a 401(k) Plan (the "Benefits"). Nothing herein shall be construed to require the employer to institute or continue any particular plan or benefit. Benefits may be added, changed, or eliminated at the sole discretion of AxoGen at any time.

6. Vacation. Employee shall be entitled to paid vacation in accordance with the vacation policy of AXOGEN in effect for employees from time to time, in no event to be less than fifteen (15) days per calendar year.

7. 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.

(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.

8. Compensation Review. AXOGEN shall, from time to time, but no less frequently than annually, review Employee's Base Salary, the Benefits and the Bonus (collectively, the "Compensation Package"), and may, in its sole discretion, increase, or decrease, any portion of the Compensation Package. 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 Agreement solely as to the Compensation Package, without waiver or modification of any other terms, conditions or provisions of this Agreement.

9. No Other Compensation. Employee agrees that the compensation and benefits set forth in this Schedule 2 are the sole and exclusive compensation and benefits to which Employee is entitled pursuant to this Agreement, 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 (this "Agreement") is entered into as of the date first written below, by and between AXOGEN CORPORATION ("AXOGEN") 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.

(i) "Confidential Information" shall mean information which has not been made publicly available by AXOGEN or the third party owner of such information, and 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, personal information, 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 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 which 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 which 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, or for no reason, return to AXOGEN all Confidential Information and other materials furnished to Employee, and any and all third party property, or copies of the same, and all documentation, notebooks and notes, reports and any other materials on electronic or printed 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 letters patent and copyright. "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. 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 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 Agreement if Employee (A) refuses to perform those acts or (B) 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 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) are not required to designate Employee as author of any Development when such Development is 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 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 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 Statute 812.081 for any violation thereof arising out of a breach by Employee of any of the material terms of this Agreement.

12. Advice of Counsel. Employee acknowledges and agrees that Employee has read and understands the terms set forth in this Agreement and has been given a reasonable opportunity to

consult with an attorney prior to execution of this Agreement and has either done so, or knowingly declined to do so.

13. Miscellaneous Provisions.

A. Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement.

B. 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 which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

C. Binding Effect. All of the terms and provisions of this Agreement, 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. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

E. Severability. If any provision of this Agreement or any other Agreement 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 shall not be invalidated and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable, and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

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

G. Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy pursuant to this Agreement. Any waiver by any party of any breach of any provision of this Agreement should 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 under this Agreement.

H. Specific Performance. Employee acknowledges that AXOGEN will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is

not specifically enforced. Therefore, in the event of a breach or threatened breach by Employee of any provision of this Agreement, then 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.

I. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Alachua County, Florida, and each of the parties irrevocably and unconditionally (i) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement 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; (ii) consents to the jurisdiction of each such court in any suit, action or proceeding; (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (iv) agrees 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 Cumulative. Except as otherwise expressly provided in this Agreement, no remedy conferred upon any party pursuant to this Agreement 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 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 shall preclude any other or further exercise thereof.

K. Governing Law. This Agreement and all transactions contemplated by this Agreement 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.

L. 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 each contributed to its negotiations and is equally responsible for its preparation.

M. Entire Agreement. This Agreement represents the entire understanding and agreement among the parties with respect to the subject matter contained in this Agreement, and supersedes all other negotiations, understandings and representations (if any) made by and among the parties.

THE PARTIES TO THIS AGREEMENT have executed this Agreement as of the first day of June, 2006.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms

Name: Jamie M. Grooms

Title: CEO

**EMPLOYEE:**

/s/ Karen Zaderej

Print Name: Karen Zaderej

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

THIS NON-SOLICITATION AND NON-COMPETE AGREEMENT (this "Agreement") is entered into as of the date written below by and between AXOGEN CORPORATION ("AXOGEN") and the undersigned AXOGEN employee ("Employee").

**RECITALS:**

A. Employee is accepting employment with AXOGEN.

B. 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 two (2) 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 (collectively, "Business Affiliates") 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 the following list of companies: Integra, Synovis, Ascension Orthopedics and Salubridge Medical.

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 methods of operation, advertising, publicity, training, business customers or accounts, or any other information relating or useful to AXOGEN's business.

4. Severability. The covenants of Employee shall be deemed severable from this Agreement, and the invalidity of any covenant shall not affect the validity or enforceability of any other covenant or portion of this Agreement.

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

6. Partial Waiver of Performance. AXOGEN's failure to object to any violation or breach of this Agreement shall not be deemed a waiver by AXOGEN, of any of its rights or remedies. AXOGEN may, in its sole discretion, specifically waive any part or all of those covenants to the extent that such waiver is set forth in writing duly authorized by AXOGEN.

7. Reasonability of Restrictions. Employee acknowledges and confirms that the length of the term and geographical restrictions contained in this Agreement are fair and reasonable and not the result of overreaching, duress or coercion of any kind. Employee acknowledges and confirms that Employee's special knowledge of the business of AXOGEN is such as would cause AXOGEN serious injury and loss if Employee were to use such ability and knowledge to the benefit of a competitor or were to compete with AXOGEN.

8. Faithful Observance. Employee acknowledges and confirms that Employee's full, uninhibited and faithful observance of each of the covenants contained in this Agreement will not cause Employee any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in this Agreement will not impair Employee's ability to obtain employment commensurate with Employee's abilities and on terms fully acceptable to Employee or otherwise to obtain income required for the comfortable support of Employee and Employee's family and the satisfaction of the needs of Employee's creditors.

9. Enforceability. In the event that any court shall finally hold that the time or territory or any other provision stated in this Agreement constitutes an unreasonable restriction upon Employee, Employee hereby expressly agrees that the provisions of this Agreement shall not be rendered void, but shall apply as to time and territory or to such other extent as such court may judicially determine or indicate constitutes a reasonable restriction under the circumstances involved.

10. Equitable Remedies. Employee hereby agrees that in the event of the violation or breach by Employee of any of the provisions of this Agreement, AXOGEN will be entitled, in its sole discretion, to institute and prosecute proceedings at law or in equity to obtain damages with respect to such violation, or breach, or to enforce the specific performance of this Agreement by Employee or to enjoin Employee from engaging in any activity in violation or breach of this Agreement, without any requirement on the part of AXOGEN to post any bond.

11. No-Compete Period Extended. In the event AXOGEN should bring any legal action or other proceeding for the enforcement of this Agreement, the time for calculating the No-Compete Period or terms of any other restriction of this Agreement shall not include the period of time commencing with the filing of legal action or other proceeding to enforce the terms of this Agreement through the date of final judgment or final resolution, including all appeals, if any, of such legal action or other proceeding.

12. Miscellaneous Provisions.

A. Amendment. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement.

B. Binding Effect. All of the terms and provisions of this Agreement, 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.

C. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

D. Waiver. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should 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 under this Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

E. Governing Law. This Agreement and all transactions contemplated by this Agreement 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.

F. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiation, anticipated performance and execution of this Agreement occurred or shall occur in Alachua County, Florida, and each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement 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) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees 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.

G. Remedies Cumulative. Except as otherwise expressly provided in this Agreement, no remedy conferred upon any party pursuant to this Agreement 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 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 shall preclude any other or further exercise of the same.

H. Construction. This Agreement shall not be construed more strongly against any party regardless of who is responsible for its preparation. The parties acknowledge each contributed to its negotiation and are equally responsible for its preparation.

I. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties with respect to the subject matter contained in this Agreement, and supersedes all other negotiations, understandings and representations (if any) made by and among the parties.

THE PARTIES TO THIS AGREEMENT have executed this Agreement as of the first day of June, 2006.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms
Name: Jamie M. Grooms
Title: CEO

**EMPLOYEE:**

/s/ Karen Zaderej
Print Name: Karen Zaderej

**Exhibit 10.8.2**

**AMENDMENT TO**
**EXECUTIVE EMPLOYMENT AGREEMENT**

**THIS AMENDMENT**, dated as of September 29, 2011, between AxoGen Corporation, a Florida corporation ("AxoGen"), and Karen L. Zaderej ("Employee").

**WHEREAS**, AxoGen and Employee previously entered into an Executive Employment Agreement dated as October 15, 2007 (the "Employment Agreement") that sets forth the terms and conditions of Employee's employment with AxoGen.

**WHEREAS**, AxoGen and Employee desire to amend the Employment Agreement to memorialize compliance with the requirements of Section 409A of the Internal Revenue Code.

**WHEREAS**, pursuant to the terms of the Employment Agreement, the Employment Agreement may be amended pursuant to a written amendment signed by the party as to whom enforcement is sought.

**NOW, THEREFORE**, AxoGen and Employee hereby agree that, effective as of the date of this Amendment, the Employment Agreement shall be amended as follows:

1. Section 6 of the Employment Agreement is hereby amended in its entirety to read as follows:

"6. Severance Pay. If (a) AXOGEN terminates the Employment Period for any reason other than Substantial Cause, Permanent Disability or death of Employee or (b) Employee terminates the Employment Period due to AxoGen's breach of this Agreement and failure to cure such breach within ten (10) days following notice of such breach, Employee shall be entitled to the following:

(i) For the remainder of the Employment Period or the length of the No-Compete Period, whichever is longer ("Salary Continuation Period"), the Company will continue to pay the Employee's Base Salary (at the rate in effect immediately before the Employee's termination date), which shall be payable in normal installments in accordance with the Company's payroll practices. Payment will commence within the sixty (60) day period following the Employee's termination date (the "Commencement Date") and continue for the remainder of the Salary Continuation Period in accordance with the Company's payroll practices. The installments for the period between the date of termination and the Commencement Date will be made in one lump sum on the Commencement Date.

(ii) For the remainder of the Employment Period, the Company will pay the Employee the bonus or bonuses that the Employee would have earned under the bonus plan in which the Employee was participating on the date of termination had the Employee's employment not terminated. The bonus payments will be paid in accordance with the terms of the applicable bonus plan

at the same times that similarly situated executives are paid bonus payments pursuant to such bonus plan, or if later, on the Commencement Date.

(iii) During the remainder of the Employment Period, if the Employee timely elects continued coverage under COBRA, the Company will reimburse the Employee for the monthly COBRA cost of continued health and dental coverage paid by the Employee under health and dental plans of the Company pursuant to section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), less the amount that the Employee would be required to contribute for health and dental coverage if the Employee were an active employee of the Company; provided that such reimbursements shall not continue beyond the period in which the Employee fails to pay the applicable COBRA costs. These reimbursements will commence within sixty (60) days following the termination date and will be paid on the first payroll date of each month.

(iv) Notwithstanding the foregoing, if the Employee is a "specified employee" of a publicly held corporation at the Employee's termination date, the postponement provisions of Section 409A of the Code, as described in Section 9.M. below, shall apply, if applicable, and the term "Commencement Date" shall mean the first payroll date following the six-month period following the date of termination."

2. Section 7(c) of the Employment Agreement is hereby amended in its entirety to read as follows:

"(c) Payment of Liquidated Damages. Any payments due to Employee pursuant to this Section 7 shall be paid by AXOGEN or its successor in accordance with Section 6."

3. A new Section 9.M is hereby added to the Employment Agreement to read as follows:

"M. 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 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. If and to the extent applicable, severance benefits shall be paid first under the "short-term deferral exception" and then under the "separation pay exception" of Section 409A of the Code, and 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 and the right to a series of installment payments shall be treated as the right to a series of separate payments. 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.

4. As a result of the pending merger of AxoGen with and into Nerve Merger Sub Corp., a subsidiary of LecTec Corporation ("Merger Sub") in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec Corporation ("LecTec"), Merger Sub, and AxoGen, which the parties amended on June 30, 2011 and August 9, 2011 (the "Merger"), LecTec will change its name to AxoGen, Inc. and Employee will be employed by AxoGen, Inc. following the effectiveness of the Merger. Accordingly, the obligations of AxoGen as set forth in this Amendment and the Employment Agreement shall be performed by AxoGen, Inc. following the effectiveness of the Merger and Employee's obligations as set forth in this Amendment and the Employment Agreement shall be performed with respect to AxoGen, Inc.

5. In all respects not modified by this Amendment, the Employment Agreement is hereby ratified and confirmed.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, AxoGen and Employee agree to the terms of the foregoing Amendment, effective as of the date set forth above.

**AXOGEN CORPORATION**

By: /s/ John P. Engels
Name: John P. Engels
Title: Vice President

Date: 9/29/2011

**EMPLOYEE**

/s/ Karen Zaderej
Karen L. Zaderej

Date: 9/29/2011

**Exhibit 10.9.1**

# EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made and effective as of the date first written below, by and between AXOGEN CORPORATION, a Florida corporation ("AXOGEN") and the undersigned employee ("Employee").

## RECITALS:

A. AXOGEN believes it is in AXOGEN's best interest to employ Employee, and Employee desires to be employed by AXOGEN.

B. 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, all upon the terms and conditions set forth in this Agreement, including those set forth in the attached Schedules and Exhibits.

(a) Terms of Employment. The terms of Employee's employment are set forth on Schedule 1 of this Agreement, which is attached to this Agreement, and incorporated in this Agreement by reference.

(b) Compensation and Benefits. The compensation and benefits to which Employee shall be entitled pursuant to this Agreement are set forth on Schedule 2 of this Agreement, which is attached to this Agreement, and incorporated in this Agreement 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 in the form of Exhibit "A" to this Agreement (the Invention Assignment").

3. Non-Competition Agreement. Contemporaneously with the execution and delivery of this Agreement, Employee shall enter into a Non-Competition and Non-Solicitation Agreement in the form of Exhibit "B" to this Agreement (the "Non-Competition Agreement").

4. Termination.

(a) AXOGEN's Rights to Terminate. AXOGEN shall have the right to terminate the Employment Period (as defined in Schedule 1 of this Agreement) only for:

(i) Substantial Cause (as defined in Section 4(b) below);

(ii) Employee's Permanent Disability (as defined in Section 4(c) below); and

(iii) the death of Employee.

(b) Substantial Cause. As used in this Agreement, the term "Substantial Cause" shall mean the commission by Employee of any act of fraud, theft, or embezzlement against AXOGEN.

(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 three (3) consecutive months or collectively for three (3) months during any period of six (6) consecutive months.

(d) Notice of Termination.

(i) Substantial Cause. If AXOGEN terminates the Employment Period for Substantial Cause, the termination shall be effective immediately upon delivery of written notice of termination from AXOGEN to Employee.

(ii) Permanent Disability. If AXOGEN terminates the Employment Period by reason of the Permanent Disability of Employee, the termination shall be effective thirty (30) days after the delivery by AXOGEN to Employee of written notice of termination of employment by AXOGEN.

(iii) Death of Employee. In the event of death of Employee, such notice of termination shall not be required, and Employee's termination of shall be effective as of the date of Employee's death.

(e) Employee's Right to Terminate. Employee shall have the right to terminate the Employment Period (i) with thirty (30) days' written notice to AXOGEN, for any reason, or for no reason, (ii) pursuant to Section 6(b) or (iii) upon ten (10) days written notice to AXOGEN if AXOGEN breaches this Agreement and AXOGEN does not cure such breach within such ten (10) day period.

5. Severance Pay. If (i) AXOGEN terminates the Employment Period for any reason other than Substantial Cause, Permanent Disability or death of Employee or (ii) Employee terminates the Employment Period due to AXOGEN's breach of this Agreement and failure to cure such breach within ten (10) days following notice of such breach, Employee shall be entitled to severance pay from AXOGEN in an amount equal to the Base Salary due to Employee for the remaining duration of the Employment Period, determined at the rate of Employee's Base Salary as of the date of termination. In addition, Employee shall be entitled, to all the Benefits and Bonus for the remaining duration of the Employment Period.

6. 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, becomes the "beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of AXOGEN representing fifty percent (50%) or more of the combined voting power of the securities of AXOGEN 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 AXOGEN (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 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 consolidates or merges with another company and AXOGEN is not the continuing or surviving corporation; or

(iv) shares of AXOGEN's common stock are converted into cash, securities, or other property, other than by a merger of AXOGEN, pursuant to Section 6(a)(iii), in which the holders of the AXOGEN'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 sells, leases, exchanges, or otherwise transfers all or substantially all of its assets (in one transaction or in a series of related transactions); or

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

(b) Employee's Right To Terminate. Employee shall have the right to terminate the Employment Period at any time following a Change in Control. If Employee terminates the Employment Period within six (6) months of such a Change in Control, he shall be entitled to the severance payments provided for in Section 5.

(c) Payment of Liquidated Damages. Any payments due to Employee pursuant to this Section 6 shall be paid by AXOGEN or its successor on the fifth (5th) day following the effective date of Employee's termination of the Employment Period.

7. Surrender of Records. Upon the termination of the Employment Period pursuant to this Agreement, Employee agrees to return to AXOGEN, in good condition, any records or documents related to AXOGEN in Employee's control or possession.

8. Miscellaneous Provisions.

A. Amendments to this Agreement only in Writing. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought, and making specific reference to this Agreement.

B. Assignments. Employee shall not assign Employee's rights and/or obligations pursuant to this Agreement. AXOGEN may assign its rights and/or obligations pursuant to this Agreement at any time without prior notice to Employee.

C. Binding Effect. All of the terms and provisions of this Agreement, 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 other Agreement 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 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 4 through 8 (inclusive) 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, 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, and any waiver by Company of any breach of any provision of this Agreement 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.

G. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex, telegraphic communication, and electronic communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, electronically transmitted, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Employee:
John P. Engels

| If to the Company: | With a Copy to: |
|---|---|
| AXOGEN CORPORATION | Gunster, Yoakley & Stewart, P.A. |
| 6565 NW 81st Blvd. | 777 South Flagler Drive, Suite 500 E |
| Gainesville, FL 32653-2974 | West Palm Beach, Florida 33401 |
| Attn: Board of Directors | Fax: (561) 655-5677 |
| | Attn: David G. Bates, Esq., |

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date telecommunicated if by telegraph, (c) on the date of transmission with confirmed answer back if by telex or electronically transmitted, and (d) on the date upon which the return receipt is signed or 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 all transactions contemplated by this Agreement 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 Shall be in Alachua County. The parties acknowledge that a substantial portion of negotiations anticipated performance and execution of this Agreement occurred or shall occur in Alachua County, Florida, and each of the parties irrevocably and unconditionally (a) agrees that any suit, action or Legal proceeding arising out of or relating to this Agreement 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) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees 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 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 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 shall preclude any other or further exercise of such right, power or remedy.

K. This Agreement Represents the Entire Agreement Between Employee and AXOGEN Relating to this Subject Matter. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter contained in this Agreement

and supersedes all other negotiations, understandings and representations (if any) made by and between the parties.

EMPLOYEE AND AXOGEN have executed this Agreement as of the 6 day of May, 2003.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms
Name: Jamie M. Grooms
Title: President and CEO

**EMPLOYEE:**

/s/ John P. Engels
John P. Engels

Employee's Initials /s/ JPE

**SCHEDULE AND EXHIBIT LIST**

Schedule 1 - Terms of Employment
Schedule 2 - Compensation and Benefits
Exhibit A - Invention Assignment and Confidentiality Agreement
Exhibit B - Non-Solicitation and Non-Compete Agreement

**SCHEDULE 1**
**TERMS OF EMPLOYMENT**

The terms of Employee's employment by AXOGEN CORPORATION ("AXOGEN") are as follows:

1. Employee's Title: AXOGEN hereby employs Employee as its Director of Operations.

2. Term of Employment. Unless sooner terminated pursuant to the provisions of the Executive Employment Agreement (the "Agreement"), the term of Employee's employment under the Agreement shall be for two (2) year(s) from the date of the Agreement (the "Employment Period"). The Agreement shall automatically renew for successive one (1) year periods unless either AXOGEN or Employee elect not to renew the Agreement with ninety (90) days written notice prior to the end of the then current Employment Period.

3. Employee's Duties: During the Employment Period:

(a) Description. Employee shall perform all duties in connection with Employee's position as President and Chief Executive Officer, or as otherwise designated by the Board of Directors of AXOGEN (the "Board"), including, without limitation, business development, marketing functions, and general overall management of AXOGEN, and other such duties that as from time to time may be delegated or assigned to Employee by the Board.

(b) Report to Board. Employee shall report directly to the Board with regard to the performance of all Employees' duties.

(c) Compliance With Employee Policies. Employee shall comply with all AXOGEN policies for employees as such policies 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 the Employment Period, 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 where the form or manner of such investment will not require services on the part of Employee that conflict with the duties of Employee, and in which Employee's participation is solely that of a passive investor.

(iii) All commissions, fees or other income earned and received by Employee, if any, in furtherance of the business of AXOGEN, or its affiliates, or from any other business or financial opportunity or endeavor in which Employee is an active participant and not a passive investor pursuant to Section 3(d)(ii) above, shall be accepted by Employee for the account of

AXOGEN, and shall be remitted to AXOGEN within three (3) days of Employee's receipt of the same.

(e) Compliance With Board Rules. Employee agrees to abide by all rules and regulations established from time to time by the Board.

**SCHEDULE 2**
**COMPENSATION AND BENEFITS**

Subject to the terms and conditions of the Executive Employment Agreement (the "Agreement"), throughout the Employment Period (as defined in Schedule 1 of the Agreement), Employee shall be entitled to receive from AXOGEN CORPORATION ("AXOGEN") the following compensation and benefits:

1. Base Salary.

(a) Amount. Employee shall be entitled to receive salary during the Employment Period at the rate of One Hundred Twenty Thousand Dollars ($120,000.00) per year, (the "Base Salary '1) effective upon execution and delivery of the Agreement.

(b) Payment. Employee and AXOGEN shall mutually agree, from time to time, whether the payment of Employee's Base Salary shall be made in all, or a combination of, cash, stock options, stock grants or in any other manner as may be agreed upon. if at any time, Employee and AXOGEN cannot mutually agree. then Employee's Base Salary shall be paid solely in cash. Until either AXOGEN or Employee notifies the other party of its desire to change the payment method of Employee's Base Salary, the Base Salary shall be payable as follows:

| | |
|---|---|
| Year 1 of the Employment Period | 33.37% Cash and 66.36% Non-Qualified Stock Options |
| Year 2 of the Employment Period | 66.37% Cash and 33.33% Non-Qualified Stock Options |
| Thereafter | 100% Cash |

Except as otherwise agreed to by Employee and AXOGEN, the Base Salary shall be payable accordance with the current normal payroll policies of AXOGEN, which policies may be changed by AXOGEN from time to time in 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 the Board of Directors of AXOGEN (the "Board") not less than annually, and the Board may increase, but not decrease, the Base Salary in its sole discretion.

(d) Additional Compensation. In addition to the Base Salary paid to Employee during the Employment Period, Employee shall be entitled to receive the Benefits and the Bonus (as those terms are defined below) during the Employment Period.

2. Business Expenses and Reimbursements. Employee shall be entitled to 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.

3. Car Allowance. During the Employment Period, Employee shall be reimbursed for all automobile expenses, with such automobile expenses limited to No 00/100 Dollars ($0.00) per month in accordance with AXOGEN-s normal automobile allowance payment practices, as in

existence from time to time, and the Employee shall supply AXOGEN with accurate invoices of all expenses submitted for reimbursement pursuant to this Section.

4. Benefits. Employee shall be entitled to receive benefits during the entire Employment Period, provided at any time by AXOGEN to any of its senior executive employees (the "Benefits").

5. Vacation. Employee shall be entitled to paid vacation in accordance with the vacation policy of AXOGEN in effect for senior executive employees from time to time, in no event to be less than three (3) weeks per calendar year.

6. Bonus.

(a) Calculation. During the Employment Period, Employee shall be paid, within thirty (30) days after delivery to the Board of AXOGEN's annual financial statements for its fiscal year end, a bonus in cash equal to No/100 Dollars ($0.00) (the "Bonus"),

(b) Payment. The Bonus 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.

7. Compensation Review. The Board shall, from time to time, but no less frequently than annually, review Employee's Base Salary, the Benefits and the Bonus (collectively, the "Compensation Package"), and may, in its sole discretion, increase, but not decrease, any portion of the Compensation Package. Any such increase 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 Agreement solely as to the Compensation Package, without waiver or modification of any other terms, conditions or provisions of this Agreement.

8. No Other Compensation. Employee agrees that the compensation and benefits set forth in this Schedule 2 are the sole and exclusive compensation and benefits to which Employee is entitled pursuant to this Agreement, and that Employee shall have no rights to receive any other compensation or benefits of any nature from AXOGEN; except for, if applicable, payments for service as a director equal to those payments, if any, paid by AXOGEN to its other members of the Board, which AXOGEN shall be obligated to pay to Employee in addition to the compensation and benefits set forth in this Schedule 2.

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

THIS INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the date first written below, by and between AXOGEN CORPORATION ("AXOGEN") 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.

(i) "Confidential Information" shall mean information which has not been made publicly available by AXOGEN or the third party owner of such information, and 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, personal information, 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 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 which 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 which 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, or for no reason, return to AXOGEN all Confidential Information and other materials furnished to Employee, and any and all third party property, or copies of the same, and all documentation, notebooks and notes, reports and any other materials on electronic or printed 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 letters patent and copyright. "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 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 Agreement if Employee (A) refuses to perform those acts or (B) 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 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) are not required to designate Employee as author of any Development when such Development is 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 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 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 Statute 812.081 for any violation thereof arising out of a breach by Employee of any of the material terms of this Agreement.**

12. Advice of Counsel. Employee acknowledges and agrees that Employee has read and understands the terms set forth in this Agreement and has been given a reasonable opportunity to

consult with an attorney prior to execution of this Agreement and has either done so, or knowingly declined to do so.

13. Miscellaneous Provisions.

A. Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement.

B. 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 which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

C. Binding Effect. All of the terms and provisions of this Agreement, 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. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

E. Severability. If any provision of this Agreement or any other Agreement 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 shall not be invalidated and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable, and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

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

G. Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy pursuant to this Agreement. Any waiver by any party of any breach of any provision of this Agreement should 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 under this Agreement.

H. Specific Performance. Employee acknowledges that AXOGEN will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is

not specifically enforced. Therefore, in the event of a breach or threatened breach by Employee of any provision of this Agreement, then 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.

I. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Alachua County, Florida, and each of the parties irrevocably and unconditionally (i) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement 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; (ii) consents to the jurisdiction of each such court in any suit, action or proceeding; (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (iv) agrees 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 Cumulative. Except as otherwise expressly provided in this Agreement, no remedy conferred upon any party pursuant to this Agreement 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 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 shall preclude any other or further exercise thereof.

K. Governing Law. This Agreement and all transactions contemplated by this Agreement 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.

L. 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 each contributed to its negotiations and is equally responsible for its preparation.

M. Entire Agreement. This Agreement represents the entire understanding and agreement among the parties with respect to the subject matter contained in this Agreement, and supersedes all other negotiations, understandings and representations (if any) made by and among the parties.

THE PARTIES TO THIS AGREEMENT have executed this Agreement as of the 6 day of May, 2003.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms
Name: Jamie M. Grooms
Title: President and CEO

**EMPLOYEE:**

/s/ John P. Engels
John P. Engels

Employee's Initials JPE

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

THIS NON-SOLICITATION AND NON-COMPETE AGREEMENT (this "Agreement") is entered into as of the date written below by and between AXOGEN CORPORATION ("AXOGEN") and the undersigned AXOGEN employee ("Employee").

**RECITALS:**

A. Employee is accepting employment with AXOGEN.

B. 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 two (2) 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 (collectively, "Business Affiliates") 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 two (2) 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 in competition with AXOGEN.

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 methods of operation, advertising, publicity, training, business customers or accounts, or any other information relating or useful to AXOGEN's business.

4. Severability. The covenants of Employee shall be deemed severable from this Agreement, and the invalidity of any covenant shall not affect the validity or enforceability of any other covenant or portion of this Agreement.

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

6. Partial Waiver of Performance. AXOGEN's failure to object to any violation or breach of this Agreement shall not be deemed a waiver by AXOGEN, of any of its rights or remedies. AXOGEN may, in its sole discretion, specifically waive any part or all of those covenants to the extent that such waiver is set forth in writing duly authorized by AXOGEN.

7. Reasonability of Restrictions. Employee acknowledges and confirms that the length of the term and geographical restrictions contained in this Agreement are fair and reasonable and not the result of overreaching, duress or coercion of any kind. Employee acknowledges and confirms that Employee's special knowledge of the business of AXOGEN is such as would cause AXOGEN serious injury and loss if Employee were to use such ability and knowledge to the benefit of a competitor or were to compete with AXOGEN,

8. Faithful Observance. Employee acknowledges and confirms that Employee's full, uninhibited and faithful observance of each of the covenants contained in this Agreement will not cause Employee any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in this Agreement will not impair Employee's ability to obtain employment commensurate with Employee's abilities and on terms fully acceptable to Employee or otherwise to obtain income required for the comfortable support of Employee and Employee's family and the satisfaction of the needs of Employee's creditors.

9. Enforceability. In the event that any court shall finally hold that the time or territory or any other provision stated in this Agreement constitutes an unreasonable restriction upon Employee, Employee hereby expressly agrees that the provisions of this Agreement shall not be rendered void, but shaft apply as to time and territory or to such other extent as such court may judicially determine or indicate constitutes a reasonable restriction under the circumstances involved.

10. Equitable Remedies. Employee hereby agrees that in the event of the violation or breach by Employee of any of the provisions of this Agreement, AXOGEN will be entitled, in its sole discretion, to institute and prosecute proceedings at law or in equity to obtain damages with respect to such violation, or breach, or to enforce the specific performance of this Agreement by Employee or to enjoin Employee from engaging in any activity in violation or breach of this Agreement, without any requirement on the part of AXOGEN to post any bond.

11. No-Compete Period Extended. In the event AXOGEN should bring any legal action or other proceeding for the enforcement of this Agreement, the time for calculating the No-Compete Period or terms of any other restriction of this Agreement shall not include the period of time commencing with the filing of legal action or other proceeding to enforce the terms of this Agreement through the date of final judgment or final resolution, including all appears, if any, of such legal action or other proceeding.

12. Miscellaneous Provisions.

A. Amendment. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement

B. Binding Effect. All of the terms and provisions of this Agreement, 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.

C. Headings. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

D. Waiver. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should 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 under this Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

E. Governing Law. This Agreement and all transactions contemplated by this Agreement 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.

F. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiation, anticipated performance and execution of this Agreement occurred or shall occur in Alachua County. Florida, and each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement 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) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees 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.

G. Remedies Cumulative. Except as otherwise expressly provided in this Agreement, no remedy conferred upon any party pursuant to this Agreement 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 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 shall preclude any other or further exercise of the same.

H. Construction. This Agreement shall not be construed more strongly against any party regardless of who is responsible for its preparation. The parties acknowledge each contributed to its negotiation and are equally responsible for its preparation.

I. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties with respect to the subject matter contained in this Agreement, and supersedes all other negotiations. understandings and representations (if any) made by and among the parties.

THE PARTIES TO THIS AGREEMENT have executed this Agreement as of the 6 day of May, 2003.

**AXOGEN CORPORATION**

/s/ Jamie M. Grooms
Name: Jamie M. Grooms
Title: President and CEO

**EMPLOYEE:**

/s/ John P. Engels
John P. Engels

Employee's Initials JPE

**Exhibit 10.9.2**

**AMENDMENT TO**
**EXECUTIVE EMPLOYMENT AGREEMENT**

**THIS AMENDMENT**, dated as of September 29, 2011, between AxoGen Corporation, a Florida corporation ("AxoGen"), and John P. Engels ("Employee").

**WHEREAS**, AxoGen and Employee previously entered into an Executive Employment Agreement dated as May 6, 2003 (the "Employment Agreement") that sets forth the terms and conditions of Employee's employment with AxoGen.

**WHEREAS**, AxoGen and Employee desire to amend the Employment Agreement to memorialize compliance with the requirements of Section 409A of the Internal Revenue Code.

**WHEREAS**, pursuant to the terms of the Employment Agreement, the Employment Agreement may be amended pursuant to a written amendment signed by the party as to whom enforcement is sought.

**NOW, THEREFORE**, AxoGen and Employee hereby agree that, effective as of the date of this Amendment, the Employment Agreement shall be amended as follows:

1. Section 5 of the Employment Agreement is hereby amended in its entirety to read as follows:

"5. Severance Pay. If (i) AXOGEN terminates the Employment Period for any reason other than Substantial Cause, Permanent Disability or death of Employee or (ii) Employee terminates the Employment Period due to AxoGen's breach of this Agreement and failure to cure such breach within ten (10) days following notice of such breach, Employee shall be entitled to the following:

(i) For the remainder of the Employment Period, the Company will continue to pay the Employee's Base Salary (at the rate in effect immediately before the Employee's termination date), which shall be payable in normal installments in accordance with the Company's payroll practices. Payment will commence within the sixty (60) day period following the Employee's termination date (the "Commencement Date") and continue for the remainder of Employment Period in accordance with the Company's payroll practices. The installments for the period between the date of termination and the Commencement Date will be made in one lump sum on the Commencement Date.

(ii) For the remainder of the Employment Period, the Company will pay the Employee the bonus or bonuses that the Employee would have earned under the bonus plan in which the Employee was participating on the date of termination had the Employee's employment not terminated. The bonus payments will be paid in accordance with the terms of the applicable bonus plan at the same times that similarly situated executives are paid bonus payments pursuant to such bonus plan, or if later, on the Commencement Date.

(iii) During the remainder of the Employment Period, if the Employee timely elects continued coverage under COBRA, the Company will reimburse the Employee for the monthly COBRA cost of continued health and dental coverage paid by the Employee under health and dental plans of the Company pursuant to section 4980B of the Internal Revenue Code of 1986, as amended (the "Code"), less the amount that the Employee would be required to contribute for health and dental coverage if the Employee were an active employee of the Company; provided that such reimbursements shall not continue beyond the period in which the Employee fails to pay the applicable COBRA costs. These reimbursements will commence within sixty (60) days following the termination date and will be paid on the first payroll date of each month.

(iv) Notwithstanding the foregoing, if the Employee is a "specified employee" of a publicly held corporation at the Employee's termination date, the postponement provisions of Section 409A of the Code, as described in Section 8.M. below, shall apply, if applicable, and the term "Commencement Date" shall mean the first payroll date following the six-month period following the date of termination."

2. Section 6(c) of the Employment Agreement is hereby amended in its entirety to read as follows:

"(c) Payment of Liquidated Damages. Any payments due to Employee pursuant to this Section 6 shall be paid by AXOGEN or its successor in accordance with Section 5.

3. A new Section 8.L is hereby added to the Employment Agreement to read as follows:

"L. 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 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. If and to the extent applicable, severance benefits shall be paid first under the "short-term deferral exception" and then under the "separation pay exception" of Section 409A of the Code, and 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 and the right to a series of installment payments shall be treated as the right to a series of separate payments. 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.

4. A new Section 8.M is hereby added to the Employment Agreement to read as follows:

"M. Liability Insurance. The Company 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 the Company covers its officers and directors."

5. As a result of the pending merger of AxoGen with and into Nerve Merger Sub Corp., a subsidiary of LecTec Corporation ("Merger Sub") in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec Corporation ("LecTec"), Merger Sub, and AxoGen, which the parties amended on June 30, 2011 and August 9, 2011 (the "Merger"), LecTec will change its name to AxoGen, Inc. and Employee will be employed by AxoGen, Inc. following the effectiveness of the Merger. Accordingly, the obligations of AxoGen as set forth in this Amendment and the Employment Agreement shall be performed by AxoGen, Inc. following the effectiveness of the Merger and Employee's obligations as set forth in this Amendment and the Employment Agreement shall be performed with respect to AxoGen, Inc.

6. In all respects not modified by this Amendment, the Employment Agreement is hereby ratified and confirmed.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, AxoGen and Employee agree to the terms of the foregoing Amendment, effective as of the date set forth above.

**AXOGEN CORPORATION**

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: CEO

Date: 9/29/2011

**EMPLOYEE**

/s/ John P. Engels
John P. Engels

Date: 9/29/2011

**Exhibit 99.1**

**AxoGen, Inc. Announces Completion of Merger, Name Change and Executive Team Changes**

September 30, 2011

ALACHUA, Florida – AxoGen, Inc. (OTCBB: LECT), the parent company of AxoGen Corporation, has announced completion of the merger between LecTec Corporation ("LecTec") and AxoGen Corporation. As a result of the merger, the Company has also announced the changes to its executive leadership team. Karen Zaderej, current CEO of AxoGen Corporation, has been appointed CEO of AxoGen, Inc. while former CEO and CFO of LecTec, Greg Freitag has been appointed CFO of AxoGen, Inc. Other officers of AxoGen Inc. include Vice President John Engels, Vice President of Sales Brad Hedger and Vice President of RA&QA Dr. Mark Friedman, Ph.D.

Also as a result of the merger, LecTec has officially changed its name to AxoGen, Inc. and relocated its headquarters to AxoGen's offices at 13859 Progress Boulevard, Suite 100, Alachua, FL 32615. The company website www.axogeninc.com includes information for individuals interested in investment.

In addition, the Company has filed with the Financial Industry Regulatory Authority ("FINRA") a request to change the Company's stock symbol from "LECT" to "AXGN". This change is anticipated to occur in early October 2011.

Karen Zaderej, AxoGen's CEO stated: "The Board, executive team and employees are excited to enter this next phase for LecTec and AxoGen. The merger provides the financial, operational and management capabilities to accelerate the growth of AxoGen's portfolio of peripheral nerve solutions. As we move forward, we intend to use our financial resources to increase value for shareholders and provide superior products for patients and physicians. I look forward to leading the team."

About AxoGen

AxoGen is a regenerative medicine company focused on the development and commercialization of technologies for peripheral nerve reconstruction and regeneration. Every day people suffer traumatic injuries or undergo surgical procedures that impact the function of their peripheral nerves. Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of function and feeling. In order to improve surgical reconstruction and regeneration of peripheral nerves, AxoGen has developed and licensed patented and patent-pending technologies, which are used in its portfolio of products. This portfolio includes the Avance® Nerve Graft which AxoGen believes is the first and only commercially available allograft nerve for bridging nerve discontinuities (a gap created when the nerve is severed). AxoGen's portfolio also includes the AxoGuard® Nerve Connector, a coaptation aid allowing for close approximation of severed nerves, and the AxoGuard® Nerve Protector that protects nerves during the body's healing process after surgery. AxoGen is bringing the science of nerve repair to life with over 6,000 surgical implants of AxoGen products performed in hospitals and surgery centers across the United States, including military hospitals serving U.S. service men and women.

AxoGen, Inc. (formerly known as LecTec Corporation) is the parent of its wholly owned operating subsidiary, AxoGen Corporation. AxoGen's principal executive office and operations are located in Alachua, FL. AxoGen Inc.'s common stock currently trades on the Over-the-Counter Bulletin Board under the symbol "LECT" although it has filed with the Financial Industry Regulatory Authority ("FINRA") a request to change the company's stock symbol to "AXGN", which change is anticipated to occur in early October 2011.

Cautionary Statements

This Press Release contains “forward-looking” statements as defined in the Private Securities Litigation Reform Act of 1995. These statements are based on management’s current expectations or predictions of future conditions, events or results based on various assumptions and management’s estimates of trends and economic factors in the markets in which we are active, as well as our business plans. Words such as “expects”, “anticipates”, “intends”, “plans”, “believes”, “seeks”, “estimates”, “projects”, “forecasts”, “may”, “should”, variations of such words and similar expressions are intended to identify such forward-looking statements. The forward-looking statements may include, without limitation, statements regarding product development, product potential or financial performance. The forward-looking statements are subject to risks and uncertainties, which may cause results to differ materially from those set forth in the statements. Forward-looking statements in this Fact Sheet should be evaluated together with the many uncertainties that affect AxoGen’s business and its market, particularly those discussed in the risk factors and cautionary statements in AxoGen’s filings with the Securities and Exchange Commission. Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those projected. The forward-looking statements are representative only as of the date they are made, and AxoGen assumes no responsibility to update any forward-looking statements, whether as a result of new information, future events or otherwise.

Visit AxoGen at www.axogeninc.com

Contact: Greg Freitag, 1 888-296-4361 (AXOGEN 1), InvestorRelations@AxoGenInc.com

**Exhibit 99.2**

# UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS OF LECTEC CORPORATION AND AXOGEN CORPORATION

The following presents unaudited pro forma condensed combined financial statements of LecTec Corporation ("LecTec") and AxoGen Corporation ("AxoGen") as if the Merger had been completed at the beginning of each of the periods presented for statement of operations purposes and as of June 30, 2011 for balance sheet purposes. The following unaudited pro forma condensed combined financial statements are based on an assumption that all of AxoGen's convertible debt, preferred stock and common stock were exchanged for LecTec's common stock in the Merger, all of AxoGen's stock options were exchanged for LecTec's stock options and all of AxoGen's outstanding warrants were forfeited. The Merger was accounted for as a purchase, with AxoGen as the acquiring entity for accounting purposes.

The historical data of LecTec and AxoGen for the year ended December 31, 2010 has been derived from their audited financial statements. The historical data of LecTec and AxoGen for the six months ended June 30, 2011 has been derived from their unaudited financial statements. The unaudited pro forma condensed combined balance sheet and statements of operations are based on assumptions and include adjustments as explained in the notes thereto.

The unaudited pro forma condensed combined financial statements include adjustments, which are based upon preliminary estimates, to reflect the allocation of the purchase price to the acquired assets and assumed liabilities of LecTec. The final allocation of the purchase price will be determined after the completion of the acquisition and will be based upon actual net tangible and intangible assets acquired as well as liabilities assumed. The preliminary purchase price allocation for LecTec is subject to revision as more detailed analysis is completed and additional information on the fair values of LecTec's assets and liabilities becomes available. Any change in the fair value of the net assets of LecTec will change the amount of the purchase price allocation. Additionally, changes in LecTec's working capital, including the results of operations from June 30, 2011 through the date the transaction is completed, will change the amount of the purchase price allocation. Furthermore, the final purchase price is dependent on the actual amount of LecTec common stock and vested employee equity awards outstanding as well as the LecTec share price on the date of closing. Final purchase accounting adjustments may differ materially from the pro forma adjustments presented here.

The summary unaudited pro forma condensed combined financial statements do not necessarily reflect the results of operations of LecTec and AxoGen that actually would have resulted had the Merger been consummated as of the dates referred to above. Accordingly, such data should not be viewed as fully representative of the past performance of LecTec or AxoGen or indicative of future results.

These unaudited pro forma condensed combined financial statements are based upon the respective historical financial statements of LecTec and AxoGen and should be read in conjunction with the historical financial statements of LecTec and AxoGen and the related notes.

**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**

**June 30, 2011**

| ASSETS | LecTec Corporation | AxoGen Corporation | Pro Forma Adjustments | Pro Forma Combined |
|---|---|---|---|---|
| CURRENT ASSETS | | | | |
| Cash and cash equivalents | $ 7,840,329 | $ 2,229,765 | $ 1,000,000(5) | $11,070,094 |
| Certificates of deposit | 1,714,848 | — | — | 1,714,848 |
| Accounts receivable | 19,111 | 615,828 | — | 634,939 |
| Inventory | — | 1,957,300 | — | 1,957,300 |
| Prepaid expenses | 650 | 162,673 | — | 163,323 |
| Deferred financing costs, current | — | 134,570 | (134,570)(6) | — |
| Deferred tax asset | 18,000 | — | (18,000)(12) | — |
| TOTAL CURRENT ASSETS | 9,592,938 | 5,100,136 | 847,430 | 15,540,504 |
| NOTES AND ACCRUED INTEREST RECEIVABLE | 2,520,712 | — | (2,520,712)(14) | — |
| PROPERTY AND EQUIPMENT, net | 2,358 | 353,580 | — | 355,938 |
| GOODWILL | — | — | 1,248,563(3) | 1,248,563 |
| INTANGIBLE ASSETS | 44,559 | 640,614 | 255,441(3) | 940,614 |
| OTHER ASSETS | — | 8,000 | — | 8,000 |
| TOTAL ASSETS | $12,160,567 | $ 6,102,330 | $ (169,278) | $18,093,619 |
| LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT) | | | | |
| CURRENT LIABILITIES | | | | |
| Accounts payable and accrued expenses | $ 611,571 | $ 1,623,244 | $ 1,400,000(10) | $ 3,400,979 |
| | | | (213,124)(4) | |
| | | | (20,712)(14) | |
| Current portion of long-term debt | — | 4,732,857 | — | 4,732,857 |
| TOTAL CURRENT LIABILITIES | 611,571 | 6,356,101 | 1,166,164 | 8,133,836 |
| LONG TERM DEBT, related party | — | 1,338,455 | (1,338,455)(4) | — |
| LONG TERM DEBT | — | 5,359,090 | (2,359,090)(4) | — |
| | | | (500,000)(4) | |
| | | | (2,500,000)(14) | |
| PREFERRED STOCK DIVIDENDS PAYABLE | — | 6,746,896 | (6,746,896)(7) | — |
| WARRANT LIABILITY | — | 2,607,510 | (2,607,510)(6) | — |
| TOTAL LIABILITIES | 611,571 | 22,408,052 | (14,885,787) | 8,133,836 |
| COMMITMENTS AND CONTINGENCIES | | | | |
| TEMPORARY EQUITY | | | | |
| Series B convertible preferred stock, $.00001 par value; 17,065,217 shares authorized; 9,782,609 shares issued and outstanding | — | 4,243,948 | (4,243,948)(4) | — |
| Series C convertible preferred stock, $.00001 par value; 16,798,924 shares authorized; 11,072,239 shares issued and outstanding | — | 8,092,568 | (8,092,568)(4) | — |
| Series D convertible preferred stock, $.00001 par value; 67,000,000 shares authorized; 30,156,259 shares issued and outstanding | — | 3,075,523 | (3,075,523)(4) | — |
| TOTAL TEMPORARY EQUITY | — | 15,412,039 | (15,412,039) | — |

See notes to pro forma condensed combined financial statements.

**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET (CONTINUED)**

**June 30, 2011**

| | LecTec Corporation | AxoGen Corporation | Pro Forma Adjustments | | Pro Forma Combined |
|---|---|---|---|---|---|
| STOCKHOLDERS' EQUITY (DEFICIT) | | | | | |
| Common stock, $.01 par value; 15,000,000 shares authorized; 4,305,026 historical shares issued and outstanding, | | | $ 62,118 | (4) | |
| 10,940,494 pro forma shares issued and outstanding | $ 43,050 | $ — | 4,237 | (5) | $ 109,405 |
| Series A convertible preferred stock, $.00001 par value; 2,544,750 shares authorized, issued and outstanding | — | 1,125,000 | (1,125,000) | (4) | — |
| Common stock, $.00001 par value; 133,000,000 shares authorized; 32,459,676 shares issued and outstanding | — | 325 | (325) | (4) | — |
| Additional paid-in capital | 13,300,545 | 10,007,860 | 1,504,004 | (3) | 45,519,941 |
| | | | 19,091,316 | (4) | |
| | | | 995,763 | (5) | |
| | | | 620,453 | (6) | |
| Accumulated deficit | (1,794,599) | (42,850,946) | 1,794,599 | (4) | (35,669,563) |
| | | | 1,987,057 | (6) | |
| | | | (134,570) | (6) | |
| | | | 6,746,896 | (7) | |
| | | | (1,400,000) | (10) | |
| | | | (18,000) | (12) | |
| TOTAL STOCKHOLDERS' EQUITY (DEFICIT) | 11,548,996 | (31,717,761) | 30,128,548 | | 9,959,783 |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT) | $12,160,567 | $ 6,102,330 | $ (169,278) | | $ 18,093,619 |

See notes to pro forma condensed combined financial statements.

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF OPERATIONS**

**For the Six Months Ended June 30, 2011**

| | LecTec Corporation | AxoGen Corporation | Pro Forma Adjustments | | Pro Forma Combined |
|---|---|---|---|---|---|
| REVENUES | $5,869,118 | $ 2,347,056 | $(5,825,000 ) | (15) | $ 2,391,174 |
| COST OF GOODS SOLD | — | 763,080 | — | | 763,080 |
| GROSS PROFIT | 5,869,118 | 1,583,976 | (5,825,000) | | 1,628,094 |
| OPERATING EXPENSES | 3,870,881 | 3,937,146 | (2,501,237) | (15) | 5,306,790 |
| INCOME (LOSS) FROM OPERATIONS | 1,998,237 | (2,353,170) | (3,323,763) | | (3,678,696) |
| OTHER INCOME (EXPENSE) | 27,413 | (1,615,894) | 1,193,660 | (9) | (394,821) |
| INCOME (LOSS) BEFORE INCOME TAXES | 2,025,650 | (3,969,064) | (2,130,103) | | (4,073,517) |
| INCOME TAX EXPENSE | (870,000) | — | 870,000 | (12) | — |
| NET INCOME (LOSS) | $1,155,650 | $(3,969,064) | $ (1,260,103) | | $ (4,073,517) |
| WEIGHTED AVERAGE COMMON SHARES OUTSTANDING: | | | | | |
| Basic | 4,305,026 | | | | 10,938,247 |
| Diluted | 4,309,578 | | | | 10,938,247 |
| INCOME (LOSS) PER COMMON SHARE: | | | | | |
| Basic | $ 0.27 | | | | $ (0.37) |
| Diluted | $ 0.27 | | | | $ (0.37) |

See notes to pro forma condensed combined financial statements.

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF OPERATIONS**

**For the Twelve Months Ended December 31, 2010**

| | LecTec Corporation | AxoGen Corporation | Pro Forma Adjustments | | Pro Forma Combined |
|---|---|---|---|---|---|
| REVENUES | $ 91,273 | $ 3,004,445 | $ — | | $ 3,095,718 |
| COST OF GOODS SOLD | — | 1,378,936 | — | | 1,378,936 |
| GROSS PROFIT | 91,273 | 1,625,509 | — | | 1,716,782 |
| OPERATING EXPENSES | 1,939,798 | 6,107,079 | — | | 8,046,877 |
| LOSS FROM OPERATIONS | (1,848,525) | (4,481,570) | — | | (6,330,095) |
| OTHER INCOME (EXPENSE) | 23,179 | (941,591) | 1,352,687 | (9) | (684,819) |
| | | | (1,119,094) | (16) | |
| LOSS BEFORE INCOME TAXES | (1,825,346) | (5,423,161) | 233,593 | | (7,014,914) |
| INCOME TAX BENEFIT | 509,047 | — | (509,047) | (12) | — |
| NET LOSS | $(1,316,299) | $(5,423,161) | $ (275,454) | | $ (7,014,914) |
| WEIGHTED AVERAGE COMMON SHARES OUTSTANDING: | | | | | |
| Basic | 4,304,204 | | | | 10,922,310 |
| Diluted | 4,304,204 | | | | 10,922,310 |
| LOSS PER COMMON SHARE: | | | | | |
| Basic | $ (0.31) | | | | $ (0.64) |
| Diluted | $ (0.31) | | | | $ (0.64) |

See notes to pro forma condensed combined financial statements.

## NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

### 1. The Merger and Basis of Presentation

On May 31, 2011, LecTec entered into an Agreement and Plan of Merger with Nerve Merger Sub Corp., a wholly owned subsidiary of LecTec ("Merger Sub"), and AxoGen, as subsequently amended by Amendment No. 1 to Agreement and Plan of Merger, dated as of June 30, 2011, and Amendment No. 2 to Agreement and Plan of Merger, dated as of August 9, 2011, among LecTec, Merger Sub and AxoGen (the "Merger Agreement"). AxoGen is a privately held company that develops and markets surgical products for the reconstruction and protection of peripheral nerves. Pursuant to the terms of the Merger Agreement, Merger Sub merged with and into AxoGen and AxoGen is the surviving corporation and a wholly owned subsidiary of LecTec (the "Merger"). On September 30, 2010, the Merger was completed. Immediately following the Merger, LecTec changed its name to AxoGen, Inc.

Pursuant to the terms of the Merger Agreement, each share of AxoGen's common stock that was issued and outstanding at such time was cancelled and converted into the right to receive 0.03727336 shares of LecTec's common stock. 6,211,759 shares of LecTec's common stock were issued in exchange for the stock of AxoGen, giving effect to the conversion of all of AxoGen's outstanding convertible securities, as discussed in more detail below, and that 567,586 shares of LecTec's common stock were reserved for issuance upon exercise of AxoGen's outstanding stock options which were converted into LecTec stock options. As a result of the Merger, all of AxoGen's outstanding convertible securities were converted to shares of LecTec's common stock, because (i) prior to the execution of the Merger Agreement, greater than 60% of the aggregate outstanding shares of AxoGen's Series B, Series C and Series D preferred stock agreed to the automatic conversion of all outstanding shares of AxoGen's preferred stock (including the Series A preferred stock) into shares of AxoGen's common stock immediately prior to the effective time of the Merger (which is the required threshold to trigger such conversion under Article 6 of AxoGen's Second Amended and Restated Certificate of Incorporation); and (ii) the Convertible Notes were automatically converted into AxoGen's common stock immediately prior to the effective time of the Merger pursuant to their terms which provide for such conversion immediately prior to the effective time of the Merger. These shares of AxoGen's common stock issued pursuant to the conversion of the preferred stock and the Convertible Notes were then cancelled and converted into the right to receive LecTec's common stock pursuant to the Merger Agreement. Additionally, all of the outstanding warrants expired unexercised because, pursuant to their terms, all such warrants will expire immediately prior to the effective time of the Merger, and over 98% of the warrants have exercise prices greater than the value of the per share consideration in the Merger with the remainder having exercise prices equal to such per share consideration. In addition, current security holders of AxoGen have agreed to purchase, immediately following the Merger, an additional 423,709 shares of LecTec's common stock at a price per share of $2.36. Upon consummation of these transactions, current AxoGen security holders will own approximately 60% of LecTec's common stock on a fully diluted basis.

Upon the closing of the transaction AxoGen stockholders will own a majority of the voting stock of the combined company, pre-Merger officers of AxoGen will assume key management positions at the combined company and pre-Merger directors of AxoGen will hold a majority of the board of directors of the combined company. As a result, AxoGen will be deemed to be the acquiring company for accounting purposes and the transaction will be accounted for as a reverse acquisition in accordance with FASB Accounting Standards Codification ("ASC") Topic 805, Business Combinations. Accordingly, the assets and liabilities of LecTec will be recorded at their estimated fair values as of the Merger closing date.

**2. Estimate of Consideration Expected to be Transferred**

After consideration of the historical market price of LecTec's common stock, on September 29, 2011 (i.e. $2.75 per share), the last practicable date to allow for preparation of this filing, the purchase price of LecTec was estimated at $13 million. The purchase price represents the sum of (i) the $11,839,000 estimated fair value of the 4,305,026 shares of LecTec's common stock, $.01 par value, to be retained by the existing common stockholders of LecTec, plus (ii) the $1,196,000 estimated fair value of the 454,000 vested LecTec stock options. The estimated value of LecTec stock options as of September 29, 2011 was determined by applying the Black-Scholes-Merton Model using the stock price of $2.75 per common share, a weighted average exercise price of $3.79, a weighted average estimated life of 6.19 years, a risk free rate of 1.30% and an expected stock price volatility of 167.50%.

**3. Allocation of Cost of the Acquired Entity**

Based on the June 30, 2011 estimated purchase price allocation, the $1.2 million excess of the $13 million estimated purchase price over the $11.8 million estimated fair valve of LecTec's net assets has been allocated to goodwill. The allocation of the estimated purchase price is included in the pro forma condensed combined balance sheet at June 30, 2011 and subject to adjustment upon a post-Merger detailed review of net assets to be acquired and their estimated fair values.

The following is a summary of the estimated purchase price allocation and goodwill:

| | |
|---|---|
| Cash and cash equivalents | $ 7,840,329 |
| Certificates of deposit | 1,714,848 |
| Other current assets | 19,761 |
| Notes and accrued interest receivable | 2,520,712 |
| Property and equipment | 2,358 |
| Intangible assets | 300,000 |
| Accounts payable and accrued expenses | (611,571) |
| Estimated fair value of LecTec's net assets | 11,786,437 |
| Estimated purchase price | 13,035,000 |
| Estimated goodwill | $ 1,248,563 |

The following is a summary of LecTec's estimated net asset fair value adjustment and goodwill:

| | |
|---|---|
| Increase in fair value of intangible assets | $ 255,441 |
| Estimated goodwill | 1,248,563 |
| Adjustment to additional paid-in capital | $1,504,004 |

**4. Common Stock, Additional Paid-in Capital and Stock Options**

The following is a summary of LecTec common stock outstanding after the Merger:

| Common Stock | Shares |
|---|---|
| Shares held by existing LecTec common stockholders as of June 30, 2011 | 4,305,026 |
| Shares of LecTec common stock to be issued to AxoGen stockholders | 6,211,759 |
| Additional shares of LecTec common stock to be purchased by certain AxoGen stockholders | 423,709 |
| Total shares outstanding after the Merger | 10,940,494 |

The unaudited pro forma condensed combined financial statements reflect the issuance of 6,211,759 shares of LecTec's common stock ($0.01 par value per share) to AxoGen shareholders in exchange for the following AxoGen debt and equity instruments:

- Convertible Debt — 3,005,672 shares of LecTec's common stock:

  The conversion of AxoGen's outstanding convertible debt of:

  - $1,338,455 and $2,359,090, accrued interest of $213,124, and estimated future interest of $50,246 using a conversion price of $0.0572 (as defined in the convertible debt agreement, the conversion price is 65% of the price per share paid at the next equity financing or $0.088) into 69,271,003 shares of AxoGen's common stock or 2,581,963 shares of LecTec's common stock using the 0.03727336 exchange ratio.
  - $500,000 and an additional note of $500,000 to be issued into 423,709 shares of LecTec's common stock using the $0.088 conversion price and 0.03727336 exchange ratio.

- Preferred Stock — 1,996,206 shares of LecTec's common stock:

  Each share of AxoGen's preferred stock is convertible into one share of AxoGen's common stock. The pro forma balance sheets include the conversion of AxoGen's:

  - Series A convertible preferred stock of 2,544,750 shares,
  - Series B convertible preferred stock of 9,782,609 shares,
  - Series C convertible preferred stock of 11,072,239 shares, and
  - Series D convertible preferred stock of 30,156,259 shares.

  for a total of 53,555,857 shares into 1,996,206 LecTec's common shares using the 0.03727336 exchange ratio.

- Common Stock — 1,209,881 shares of LecTec's common stock:

  The conversion of 32,459,676 shares of AxoGen's common stock into 1,209,881 shares of LecTec's common stock using the 0.03727336 exchange ratio.

Additionally, the pro forma condensed combined financial statements reflect 423,709 shares of LecTec common stock to be purchased by certain AxoGen's stockholders immediately after the closing of the Merger at a price of $2.36 per share.

The pro forma condensed combined financial statements also reflect elimination of LecTec's historical accumulated deficit as a result of the Merger.

The following summary reflects the conversion of AxoGen's convertible debt and equity into 6,211,759 shares of LecTec's common stock and the elimination of LecTec's accumulated deficit:

| | |
|---|---|
| Accrued interest included in accounts payable and accrued expenses | $ 213,124 |
| Long-term debt, related party | 1,338,455 |
| Long-term debt | 2,359,090 |
| Long-term debt | 500,000 |
| Series B convertible preferred stock | 4,243,948 |
| Series C convertible preferred stock | 8,092,568 |
| Series D convertible preferred stock | 3,075,523 |
| Series A convertible preferred stock | 1,125,000 |
| Common Stock | 325 |
| AxoGen's convertible debt and equity | 20,948,033 |
| Issuance of LecTec's common stock—6,211,759 shares at $.01 par value | (62,118) |
| Elimination of LecTec's accumulated deficit | (1,794,599) |
| Adjustment to additional-paid-in capital | $19,091,316 |

**5. Purchase of Common Stock**

This adjustment represents the purchase of 423,709 shares of LecTec common stock by certain AxoGen stockholders at approximately $2.36 per share immediately after closing of the Merger.

**6. Deferred Financing Cost and Warrant Liability**

This adjustment reflects the elimination of deferred financing cost and warrant liability as a result of the conversion of the related debt and preferred stock in accordance with the Merger.

**7. Preferred Stock Dividend**

This adjustment represents the elimination of the preferred stock dividend on AxoGen's outstanding Preferred Stock since the Preferred Stock dividend will be forfeited in accordance with the Merger.

**8. Stock-based Compensation**

Upon Merger, 15,227,654 shares of AxoGen common stock reserved for issuance pursuant to AxoGen stock options will no longer be subject to such reservation and LecTec will reserve 567,586 shares of LecTec common stock for LecTec stock options to be exchanged for AxoGen stock options. The incremental cost of approximately $68,000 resulting from the stock option modification is not included in the unaudited pro forma condensed combined statements of operations.

**9. Interest Expense and Change in Fair Value of Warrants**

This adjustment reflects the reversal of the following expenses as they would not be incurred assuming the Merger had been completed at the beginning of the period:

| | Six Months Ended June 30, 2011 | Year Ended December 31, 2010 |
|---|---|---|
| Interest expense related to amortization of deferred financing cost | $ 1,031,406 | $ 1,322,413 |
| Interest expense related to amortization of debt discount on AxoGen's warrants | 11,435 | 108,580 |
| Interest expense related to convertible notes | 213,124 | — |
| Change in fair value of warrant liability | (62,305) | (78,306) |
| | $ 1,193,660 | $ 1,352,687 |

**10. Merger Related Charges**

The total Merger related costs have been preliminarily estimated to be approximately $1.40 million and are not included in the unaudited pro forma condensed combined statements of operations.

**11. Basic and Diluted Income (Loss) per Share**

Basic income (loss) per common share is computed by dividing net income (loss) by the weighted average common shares outstanding. Diluted income (loss) per common shares is computed by dividing net income (loss) by the weighted average common shares outstanding and common shares equivalents related to stock options when dilutive. The effect of any outstanding common stock equivalents for the six months ended June 30, 2011 and the year ended December 31, 2010 has not been included in the pro forma per share amounts as it would be anti-dilutive.

Pro forma weighted average shares outstanding were as follows:

| | Six Months Ended June 30, 2011 | Year Ended December 31, 2010 |
|---|---|---|
| LecTec's historical weighted average shares | 4,305,026 | 4,304,204 |
| LecTec's shares issued from conversion of AxoGen's convertible debt, preferred stock, and common stock | 6,209,512 | 6,194,397 |
| Additional shares of LecTec common stock to be purchased by AxoGen stockholders | 423,709 | 423,709 |
| Weighted average shares outstanding—basic and diluted | 10,938,247 | 10,922,310 |

**12. Income Taxes**

No income tax benefit was included in the unaudited pro forma condensed combined statements of operations because a full valuation allowance has been established on the deferred tax asset as it is more likely than not that future tax benefits will not be realized.

**13. Non-recurring Charges**

The unaudited pro forma condensed combined statements of operations do not include the impact of the following non-recurring (income) expense items directly related to the Merger:

| | |
|---|---|
| Merger related charges | $1,400,000 |
| AxoGen's incremental cost on stock option modification | 68,000 |
| Total | $1,468,000 |

**14. LecTec's Notes Receivable and AxoGen's Long-Term Debt**

This adjustment represents elimination of $2,000,000 and $500,000 notes issued by AxoGen to LecTec outstanding at June 30, 2011 and the related interest of $20,712 for the six months ended June 30, 2011.

LecTec also had a commitment to loan an additional $2,000,000 to AxoGen on the earlier of (a) 90 days after the date of the initial $2,000,000 loan on May 31, 2011 or (b) receipt of all required shareholder approvals of the Merger. On August 29, 2011, AxoGen issued an additional subordinated secured convertible promissory note in the principal amount of $2,000,000 to LecTec on the same terms as the $2,000,000 and $500,000 notes issued by AxoGen to LecTec in May 2011.

Subsequent to the Merger, LecTec forgave these notes.

**15. Infringement Revenue**

This adjustment represents elimination of $5,825,000 of infringement revenue of LecTec and the related expenses of $2,501,237 for the six months ended June 30, 2011. Those revenue and expenses were excluded since they were considered to be non-recurring items.

**16. Gain from Termination of Distribution Agreement**

This adjustment represents elimination of $1,119,094 of AxoGen's gain from termination of distribution agreement since it was considered to be a non-recurring item.

**17. Loan and Security Agreement**

On September 30, 2011, AxoGen and its parent company, AxoGen, Inc., as borrower, entered into a $5 million Loan and Security Agreement with Midcap Financial SBIC, LP, as administrative agent. The lenders received warrants to purchase 89,686 shares of AxoGen, Inc.'s common stock at $2.23 per share.